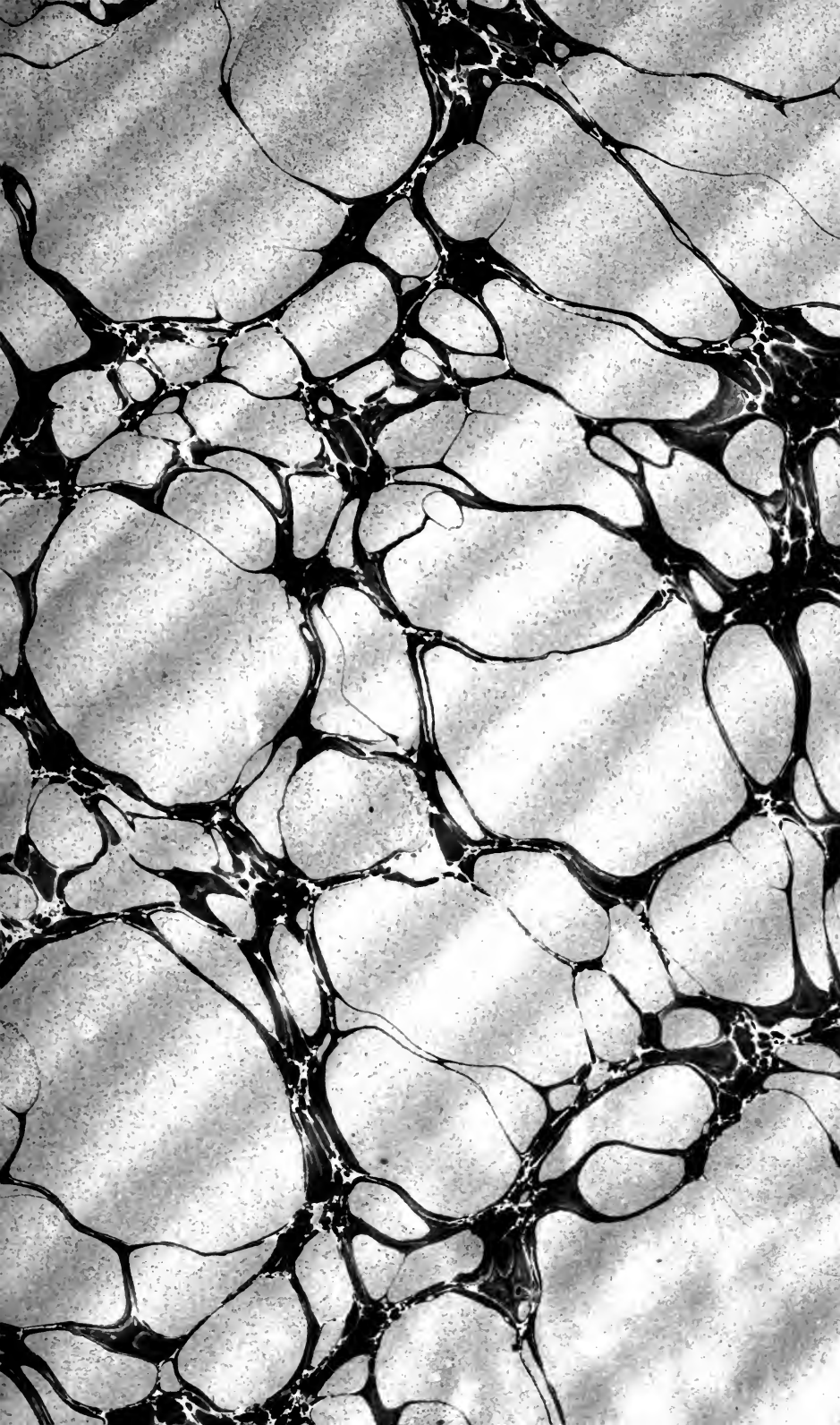

ARBITRATION
IN
LATIN AMERICA

ARBITRATION IN LATIN AMERICA

BY

GONZALO DE QUESADA, 1868-

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Delegate to the Second Peace Conference

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To his Excellency M. Nelidow

and to the Members of the

Second Peace Conference.

Why have I yielded to the kind encouragement of some friends to give to the printer these pages where, with no attempt at original literature, I have gotten together, in documentary form, the ideas and tendencies of Latin America as to arbitration?

The First Peace Conference, assembled in 1899 by the noble initiative of His August Majesty the Czar of all the Russias, crystallized a crying need, a supreme longing of humanity, overwhelmed by war which kept alive the sufferings and misfortunes of the past, depriving the present of its joys and darkening the future with threats of desolation and of death.

To limit armaments, the ready instruments of destruction, was the initial idea of the labor to be accomplished by the Peace Conferences. Were this done, much of the evil, if not all, would disappear. After this great step, others would follow.

It is unnecessary to rehearse here the reasons why all that was expected has not been achieved, why the ideal was beyond the limit of realization. The events are too recent and we only see what has not been obtained, underestimating the benefits which have resulted. There has not been failure, nor even discouragement, only that the summit is high, higher than it was ever thought to be in our enthusiasm, and the road sometimes steeper and narrower than we expected. But only those who have faith reach the promised land. He who believes, girding his loins, with resolute face to adversity and difficulties,

stouthearted, leaving the weaklings behind, may or may not arrive at the goal, but his duty is done and his work remains.

This work of redemption does not advance by leaps and bounds; it falls also under the law of evolution. War cannot be suppressed at once, as if by the touch of a magic wand; the peoples must be educated, Governments must be convinced. Still its occurrence should be made as rare as possible, for with the continued maintenance of peace, peace at last will be the rule and not the exception, peace will be enduring and universal.

One of the principal means, perhaps the means, to reduce the possibilities of war, consists in the application to international questions of the methods and practices, prevalent among men, for the adjustment and solution of their misunderstandings and disputes.

A conflict of interests, a difference as to rights or duties, arises between two individuals; each considers his case as just, beyond peradventure of doubt; yet, a third impartial party, a judge, is called upon to place in the balance of equity the pros and the cons and to render a decision. Such is the essence of juridical justice among men. Without respect and obedience to it society could not endure.

Nations, which are only conventional collectivities of men are subject to the same laws, passions, prejudices and ambitions. Their conditons, as compared with those of men, may vary owing to the fact that they are practically endowed with a life extending beyond the limits of that of individuals, thus enlarging the scope of their obligations and responsibilities; but it is also true that the basic principle, established between individuals, remains extant, in all its force and paramount importance, and constitutes the desideratum for the solution and settlement of international conflicts. Were this

principle to become universally accepted by the submission to arbitration of all questions which might entail the use of force and violence, a new era of progress and happiness would be opened to mankind.

For this reason, arbitration has become, and is, the chief aim of these International Conferences. Those at The Hague have endeavored to attain it. Latin America has done its share in that humanitarian labor. At the First Peace Conference the Nations represented were those af Europe, some of Asia and the United States. Mexico was the sole Power from Latin America. Europe and the Old World in general, had been too busy, during the last three quarters of a century, to take notice of the struggle for nationality and the development of liberty and justice in Latin America, known mostly by its internal commotions. Yet, in the midst of these intermitent shocks, Latin America, from the very day of its emancipation, espoused arbitration, and appealed to it in its international relations. It encouraged and fostered it in Conferences, by treaties and through its constitutional provisions. In the following pages it will be seen how, more than half a century before the First Hague Conference, it forecast arbitration, its form, its field, its mode of application, and how, notwithstanding the failure to accomplish immediate and final results, Latin America has continued undaunted, upwards and onwards, towards the ideal. The action of the Latin American Countries was limited among themselves at the beginning, – although from the very first they invited the United States and welcomed the representatives of friendly European Nations — afterwards they acted jointly with the United States, and lastly deferring their resolutions to a universal assembly, they have thus shown a constancy and consistency of which they might

well be proud. At the suggestion of the illustrious President of the United States, Theodore Roosevelt, and generously invited by His August Majesty the Emperor Nicholas II, Latin America is now enjoying, in the Second Peace Conference, the hospitality of the Queen of the Netherlands, Her Gracious Majesty Queen Wilhelmina. Modestly, Latin America does not pretend to lead; but it collaborates cordially and sincerely.

May these pages help to create the conviction that Latin America has contributed to the future and saving triumph of arbitration. May they serve to acquaint those who have welcomed us to their councils, with the mind and the heart of Latin America. The indentity of the efforts realized in the New World with those carried forward in the Old proves that, after all, the brotherhood of man is not a dream, but a consummation surely to be reached.

GONZALO DE QUESADA.

The Hague, October 1907.

CONTENTS.

ARBITRATION
IN
LATIN AMERICA

CHAPTER I.

1815 — 1889.

BOLIVAR — THE CONGRESS OF PANAMA — PROPOSED CONFERENCES AT MEXICO, 1831 - 1838 - 1839 - 1840 — CONFERENCES OF LIMA, 1847 - 1864 — ARBITRATION BETWEEN COLOMBIA AND CHILI, 1880 — PROPOSED CONGRESS AT PANAMA, 1881 — PROPOSED CONGRESS AT WASHINGTON 1882.

Latin America hitherto has been known to the world principally as an inexhaustible source of agricultural and mineral production, as a propitious home for the surplus population of other countries and as a field of exploitation for capital desirous of huge and easy profits. This and the exaggerated and maligned reports of its political disturbances, - inherent in all nations in a formative period, - have constituted almost the sole information in regard to it that reaches the public at large in Europe and Asia as well as in some parts of the United States.

The Second Peace Conference in which these young States have deliberated, side by side with the Old World Powers, has shown that there are other things in Latin America besides untold, undeveloped material wealth and that it has an intelectual and moral progress, inspired by the highest of ideals: Peace and Justice! To promote them it has striven, with more or less success, but always constant and persevering, by means of congresses and treaties, to bring together the Countries which compose it, and has

been animated, from the first years of its emancipation, at the begining of the last century, by a humanitarian spirit which has favored and advocated Arbitration as the means of settling all difficulties arising not only among themselves but between them and other Governments.

As early as 1815, the immortal South American soldier and Liberator, Bolivar, to whom five Republics owe their birth and a continent the affirmation of its independence, foresaw with his genius these conferences tending to universal peace and he exclaimed prophetically: „May it be granted that some day we be happy enough to install an august body of the representatives of republics, kingdoms, and empires, to consider and discuss the weighty questions of Peace and war with the nations of other parts of the world. The existence of such a congress will be possible at some future epoch in our march onward." (*)

In 1822 as President of the Republic of Colombia, including New Granada, Venezuela and Ecuador, Bolivar invited the Governments of Mexico, Peru, Chili and Buenos Aires to meet at Panama or at any other place that the majority might select and constitute „an assembly of Plenipotentiaries from every State to serve us as counsel in all great conflicts, as a point of contact in all common dangers, as a faithful interpreter of public treaties, when difficulties arise, and, finally, as conciliator of our differences."

The instructions addressed by Bolivar, through General Sucre, to the Peruvian Delegates contained already the principles of mediation, conciliation and arbitration. He desired that the „assembly should be permanent so as to

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(*) Señor Mendoza's Speech at the National Arbitration and Peace Congress, New-York 1907.

answer these importants ends: 1st: To watch over the exact observance of treaties, and over the safety of the Federation; 2nd: To mediate amicably between any of the allied States and foreign Powers should any controversy arise; 3rd: To act as conciliator and even as arbitrator, if possible, between the allies, should they unfortunately have ground for antagonism tending to disrupt their relations."

The Congress, called by the Secretary of State of the United States, Mr. Clay, „the boundary stone of a new epoch of the world's history," was attended by Colombia, Central-America, Mexico, and Peru. Brazil did not attend the Conference although it promised in 1825 to send a Plenipotentiary, probably on account of it not being desirous of doing anything which might be considered a violation of neutrality between the belligerent States of America and Spain.

So with the United States (*) which only after a promise that the proposed expedition planned by Bolivar for the liberation of Cuba and Porto Rico from the Mother Country would be postponed and that nothing would be done against neutrality, decided to appoint plenipotentiaries to the Congress, but one died on his way to Panama and the other arrived when the sessions had been brought to a close. Great Britain. as well as Holland sent representatives with the sole mission of watching the work of the Congress.

According to the protocol of June 23rd 1826, Señor Gual laid before the Assembly a communication, addressed

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(*) Latané, „Diplomatic Relations of the United States and Spanish America", page 102.

Gil Fortoul, „Historia Constitucional de Venezuela", page 384.

Von Holst, „Constitutional History of the United States" 1750 to 1732.

Instructions to the Delegates of the United States to the Panama Congress by Secretary Clay. 1825.

to him as President of the same by Mr. Edward James Dawkins, accompanying his credentials as an Envoy of the British Government, wherein it was set forth, among other things that Mr. Dawkins had deserved the confidence of His Majesty, and had been directed to reside at whatever place the Congress of Plenipotentiaries of the American Republics should meet, and place himself at once with the said plenipotentiaries in frank and friendly communication. The Assembly, taking into consideration the generous and liberal policy of the Government of His British Majesty towards the American States, resolved that a letter of courtesy be written to His Excellency Secretary Canning in answer to the above, and another to Mr. Dawkins, in acknowledgment of the receipt of his credentials.

In the protocol of the Seventh Session, the 13th of July 1826. it is stated that Colonel Van Veer requested the President of the Conference to tell the assembly that His Majesty the King of the Netherlands had instructed him privately to come to Panama, and expressed in his name to the Plenipotentiaries attending this Congress his earnest and sincere wishes for the happiness of the allied Republics; that he had been ordered by His Majesty to reside wherever the assembly should hold its sessions: that His Majesty had not as yet made a formal recognition of the independence of the New American States, formerly Spanish Colonies, because such a recognition was not of a great importance for the said states, and because His Majesty desired not to disturbe in any way, for the time being, the relations of harmony in which His Majesty was with the other powers of continental Europe; that His Majesty had nevertheless appointed two consuls-general one for Colombia and another for Mexico, and that it was probable that some official character would be given also to Mr. Van Veer himself.

Sr. Michelena said that Mr. Van Veer had made to him the same request; that he had received from the Minister at London a letter of recommendation of Mr. Van Veer; that when he was in London as Minister from Mexico the Government of Holland had expressed to him its sentiments of consideration and esteem towards the allied Republics; and that he himself had appointed temporarily a consul of Mexico at the Netherlands, and that the Minister of that Country had granted the exequatur.

It was resolved that the same gentlemen who had been requested by Mr. Van Veer to make this verbal and confidential communication, should assure him in answer, in the

same way, of the high appreciation by the Assembly of the feelings of His Majesty the King of the Netherlands, that as Mr. Van Veer had not presented any kind of credentials the assembly could not have with him any formal intercourse; but that the Plenipotentiares who composed the Congress would have no objection to frankly communicate with him personally on any subject which might have a bearing, even indirectly, on the Netherlands owing to the good qualities of Mr. Van Veer and the generous policy of His Majesty the King of Holland.

The treaty of alliance signed at Panama, on the 15th of July 1826. provided for the conclusion by the Signatories, of Conventions, for future conferences, for the creation of an International Court of Arbitration, for the application of the principle of mediation and for the observance of neutrality, in these articles:

„Article 11. The contracting parties desiring more and more to strengthen and make closer their fraternal bonds and relations by means of frequent and friendly conferences, have agreed and do agree to meet every two years in time of peace and every year during the present and future common wars, in a general assembly composed of two Ministers Plenipotentiary on the part of each party, who shall be duly authorized by the necessary full powers.

Article 13. The principal objects of the general assembly of Ministers Plenipotentiary of the confederated powers are:

First. To negotiate and conclude between the Powers it represents all such treaties, conventions, and arrangements, as may place their reciprocal relations on a mutually agreeable and satisfactory footing.

Second. To contribute to the maintenance of a friendly and unalterable Peace between the confederate powers, serving them as a counsel in times of great conflict, as a point of contact in common dangers, as a faithful interpreter

of the public treaties and conventions concluded by them in the said assembly, when any doubt arises as to their construction, and as a conciliator in their controversies and differences.

Third. To endeavor to secure conciliation, or mediation in all questions which may arise between the allied Powers, or between any of them and one or more Powers foreign to the Confederation whenever threatened with rupture, or engaged in war because of grievances, serious injuries, or other complaints.

Article 16. The contracting parties solemnly obligate and bind themselves to amicably compromise between themselves all differences now existing or which may arise in the future; in case no settlement can be reached between the disagreeing powers the question shall be taken for settlement to the judgment of the assembly, whose decision shall not be obligatory, however, unless said powers shall have expressly agreed that it shall be.

Article 17. Whatever complaints for injuries, serious damage, or other grounds there be that one of the contracting parties can bring against another or others, none of them shall declare war nor exercise acts of reprisal against the Republic believed to be the offender, without first submitting its case, supported by the necessary documents and proofs, with a detailed relation of the acts complained of to the conciliatory decision of the general assembly.

Article 18. In case any one of the confederated Powers deem it advisable to declare war or commence hostilities against any Power foreign to this Confederation, it shall first solicit the good offices, interposition, and mediation of its allies, and these are bound to employ them in the most efficacious manner possible. If the interposition be unavailing

the Confederation shall declare whether or not it embraces the cause of the confederate; and even though it shall not embrace it, it shall not, under any pretext or reason, ally itself with the enemy of the confederate."

Although all the contracting parties did not ratify the treaties, these Conventions remained as monuments to the honor of Bolivar and Latin America, as heralds of the lofty aspirations that they embodied and the republics of the New Continent, true to them, have generally followed the precept of appealing to arbitration for the settlement of their international disputes. The history of the past century proves the fidelity of Latin America to those ideals of the Liberator, and as the Venezuelan Delegate to the Second Peace Conference, Senor Fortoul, has well said in his exhaustive work „The Constitutional History of Venezuela": „It is worthy of notice and record that the Bolivian diplomacy established a precedent which, taking its inspiration from an old Greek institution (the Amphictyonic League), from the project of Henry IV (Conseil General de l' Europe), and from the ideas of certain modern philosophers, especially those of Jeremy Bentham (A plan for an universal and Perpetual Peace) and Manuel Kant (Ein permanenter Staaten-Congress) came sixty-seven years in advance of the resolutions of the International American Congress of Washington (1890) and seventy-five years in advance of the Conference and Convention of the Hague (1899)".

In 1831 Mexico proposed a Conference of American Republics to bring about a union and an alliance for defense and also to seek the recognition of „friendly mediation" for the settlement of disputes between them and the promulgation of a Code of public law to regulate their mutual relations, a code which undoubtedly would remove one of the difficulties

for the succesful operation of a court of international arbitration; again in 1838, 1839 and 1840 an invitation was made by the Government of Mexico; but nothing was done. At Lima in 1847 there assembled the representatives of Bolivia, Chili, Ecuador, New Granada and Peru. The United States which had been invited at the first session, but which was then at war with Mexico, did not attend. The purpose of this Congress was the formation of an alliance for „maintaining their independence, sovereignty, dignity and territorial integrity, and of entering into such other compacts as might be conducive to their common welfare".

The Peruvian Government, again, in 1864, invited the Spanish American nations to another Congress which was attended by the Argentine Republic, Bolivia, Chili, Colombia, Ecuador, Guatemala, Peru and Venezuela. Among the measures recommended was one which looked to the peaceful settlement of boundary disputes which in nearly all the American States constituted the cause of international troubles and even of war, and the explicit proposal was added „irrevocably to abolish war, superseding it by arbitration, as the only means of compromising all misunderstandings and causes for disagreement between any of the South-American Republics."

On September the 3rd 1880, Colombia and Chili signed at Bogotá, a Convention for the preservation of peace between them as follows:

„Article 1. The United States of Colombia and the Republic of Chili bind themselves in perpetuity to submit to arbitration, whenever they can not be settled through diplomatic channels, all controversies and difficulties, of whatever nature that may arise between the two nations,

notwithstanding the zeal which their respective Governments may display to prevent them.

Article 2. The selection of the arbitrator, in case the necessity for his appointment shall arise, shall be made by a special agreement in which shall be also clearly set forth the question in dispute and the procedure to be observed in such arbitration. In case no agreement can be reached upon such an arrangement or if that formality be expressly waved, the arbitrator fully authorized to excercise the functions thereof shall be the President of the United States of America.

Article 3. The United States of Colombia and the Republic of Chili will endeavor, at the earliest opportunity, to conclude with other American nations, conventions like unto the present, to the end that the settlement by arbitration of each and every international controversy shall become a principle of American public law."

Pursuant to this Article the Minister of Foreign Relations of Colombia invited the governments of America to meet at Panama to give the Convention full international effect.

Although the Conference did not take place, owing to the war between Chili and Peru the different Governments expressed themselves agreeable to the idea. The Dominican Republic hastened „to adhere at once to the measure. . . . the only practical means of making effective the immortal idea of the Liberator Bolivar, for from the first meeting of a Congress of plenipotentiaries other like reunions will spring and, as a consequence the Latin America Amphictyony or Confederation". Costa Rica in answering considered that „the saving principle of arbitration not only secures us against all chances of armed controversies which deluge us with

blood, devastate our lands, and paralyze our progress, but it must even contribute greatly to the reform of our political existence by accustoming us to submit to argument instead of force the success of our aspirations, and to admit the authority of an arbitrator who in internal questions is naturally the instrument for settling our frequent disputes. I look upon this, most excellent sir, as replete in results directly and indirectly tending to the happiness of America and to the imperishable glory of democracy".

Nicaragua replied accepting the proposal with enthusiasm declaring that „the suppression of war is one of the most noble aspirations of the present day, in which humanity marches with rapid strides towards perfection, thanks to the peaceful labors of the nations. The established relations between them are daily multiplied, creating new and mutual interests, which can only prosper under the protecting shelter of universal concord."

The Argentine Republic in accepting the invitation desired also to have it established, in the international agreements, that there are not, in Spanish America, territories which may be considered *res nullius* and that all territory comprising it, however uninhabited or distant, belonged to the former Spanish Provinces which after 1810 were invested with the rank of free and sovereign states and proclaimed that „arbitration is certainly a noble aspiration of the present day, and the Argentine Government can point with pride to the endorsement, from an early date, of that measure which wisely reconciles the requirements of justice with the generous sentiments of mankind. It had occasion to stipulate for it with the most excellent Government of Chili in 1856 to settle boundary controversies then existing and those that might thereafter arise. It declared in 1874 in

official documents given over to the domain of publicity „to be resolved, with or without treaties to settle all international controversies by arbitration" and faithful to those declarations, it adopted it in 1876 to settle its controversies with Paraguay, after a long war, begun for reasons of honor and of security, and in which its arms and those of its allies completely repelled the advances of that nation".

Guatemala considered the idea „as philantropic and its fulfillment one of the greatest triumphs of modern civilization"; Salvador hoped for the realization of the project „a most glorious achievement;" Ecuador promised to send its plenipotentiaries stating that „in Ecuador the important principle of international arbitration in the negotiation of public treaties has been raised to a constitutional canon. The article to which I allude", said the Minister, „in our constitution reads literally: „In every negotiation for the conclusion of international treaties of frienship and commerce it shall be proposed that differences between the contracting parties should be settled by arbitration by a friendly power, or powers, without resorting to arms."

Bolivia promised to send a representative „convinced that all international agreements paving the way for the abolishment of war, or tending to civilize it in behalf of peace are the great aspirations of cultured nations."

Uruguay considered the Convention of the 3rd Sept. 1880 „as the happy complement of the wise and humane resolution of the plenipotentiaries of the Congress of Paris in 1856 to the effect that: „States between which any serious misunderstanding should arise should before resorting to arms, appeal, as far as circumstances shall permit, to the good offices of a friendly power." „The resolution met with

the approval of the Eastern Government - Uruguay - as well as the majority of the Governments of Europe and America; but a sorrowful experience has shown that it was forgotten, or ineffectual to prevent disastrous wars." „Obligatory arbitration will undoubtely have greater efficacy, but there will be surely no objection to accompany it with other provisions to guaranty its enforcement." „Controversies and difficulties of every kind being submitted to arbitration, disputes as to boundaries or territorial integrity should be understood, as being included, and so your excellency's note would indicate when it asserts that the saving principle which the trascendent compact concluded between Columbia and Chili embodies will undoubtely secure the prevention of war growing out of international disputes, especially upon questions of boundaries." „The beneficent views of that agreement will be more surely realized by laying down principles and rules which will render those controversies impossible," and Honduras announcing that it would send a representative to Panama, stated „that he would be empowered to conclude an arbitration convention which is to put an end to the period of fraticidal wars on our Continent, and open the happy era of peace and fraternity among the nations of Spanish-America."

In November 29, 1881, Mr. Blaine, the Secretary of State of the United States, in a circular letter proposed a Congress to be held in Washington, on the following year. He declared in that note that the attitude af the United States was well known through its persistent efforts to avoid the evil of warfare, that this attitude had been consistently maintained and that the good offices of the Government of the United States for the purpose of quieting discord had not been tendered at any time with a show of dictation or com-

pulsion, but only as exhibiting the solicitous good will over common friends.

He did justice to the growing disposition of certain States of Central and South America to submit to arbitration, rather than to war, questions of international relationship and boundary. And in extending the invitation he expressed the views of the President that the Congress should strictly confine itself „to consider and discuss the methods of preventing war between the nations of America, that its sole aim shall be to seek a way of permanently averting the horrors of cruel and bloody combat between countries, oftenest of one blood and speech, or the even worse calamity of internal commotion and civil strife; that it shall regard the burdensome and far reaching consequences of such struggles, the legacies of exhausted finances, of oppresive debt, of onerous taxation, of ruined cities, of paralyzed industries, of devastated fields, of ruthless conscription, of the slaughter of men, of the grief of the widow and the orphan, of embittered resentments, that long survive those who provoke them and heavily afflict the innocent generations that come after." The Conference did not take place owing to the contest which was been waged in the South Pacific Coast; but satisfactory answers were received from all the countries, Mexico saying in its reply, among other things, through its Secretary of State, Mariscal, that „since 1853 the Mexican Government had been engaged in this glorious undertaking, in consequence as I understand, of a recommendation from the Senate to the President that, whenever it should prove possible, there should be inserted in treaties made, an article looking to the submission of the difficulties arising between the contracting parties to the decision of arbitrators chosen by common consent; and even before that date, in 1848, a similar clause

had been inserted, with prudent limitations, in the treaty of peace concluded that year by our two nations.(*) It is thus not strange that the United States should now recommend the same ideas to all the States of America in general, nor is it strange that Mexico should be found disposed to adopt it."

(*) The 21st Article of the tretay of February the 2nd 1848, commonly called the Treaty of Guadalupe Hidalgo, reads as follsws;

„If unhappily, any disagreement should hereafter arise between the Governments of the two Repubiics, whether with respect to the interpretation of any stipulation in this treaty, or with respect to any other particular concerning the political or commercial relations of the two nations, the said Governments, in the name of those nations, do promise to each other that they will endeavor, in the most sincere and earnest manner, to settle the differences so arising, and to preserve the state of peace and friendship in which the two countries are now placing themselves, using for this end, mutual representations and pacific negotations. And if, by these means, they should not be enable to come to an agreement, a resort shall not, on this account, be had to reprisals, aggression, or hostility of any kind, by the one republic against the other, until the Government of that which deems itself aggrieved shall have maturely considered, in the spirit of peace and good neighborship, whether it would not be better that such difference should be settled by the arbitration of commissioners appointed on each side, or by that of a friendly nation. And should such course be proposed by either party, it shall be acceded to by the other, unless deemed by it altogether incompatible with the nature of the difference, or the circumstances of the case".

CHAPTER II.

1889—1890.

FIRST PAN-AMERICAN CONFERENCE. WASHINGTON.

On the 24th of May 1888, the President of the United States approved a law authorizing him to invite the several Governments of America for a Conference to be held at Washington in the following year for the purpose of discussing and recommending for adoption, to their respective Governments, some plan of arbitration for the settlement of disagreements and disputes that may hereafter arise between them, and for considering questions relating to the improvement of business intercourse and means of direct communication between said countries, and to encourage such reciprocal commercial relations as will be beneficial to all and secure more extensive markets for the products of each of said countries.

In the invitation sent, the following points were enumerated:

„An agreement upon the recommendation for adoption to their respective Governments of a definite plan of arbitration of all questions, disputes and differences that may now or hereafter exist between them, to the end that all difficulties and disputes between such nations may be peaceably settled and wars prevented."

And to consider such other subjects relating to the welfare of the several States represented as may be presented by

any of said States which are hereby invited to participate in said Conference."

The Conference lasted from the second of October 1889, to April 19th 1890 and was attended by representatives of the United States, Argentine Republic, Bolivia, Brazil, Chili, Colombia, Costa Rica, Ecuador, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Salvador, Uruguay and Venezuela; the Kingdom of Hawai was also invited and took part in the deliberations.

On the 15th of January 1890, the Representatives of Brazil and the Argentine Republic, among whom was the Argentine Delegate to the Second Peace Conference, Dr. Roque Saenz Peña, (*) presented the following propositions:

„Considering that the international policy of the American Conference should be characterized by reciprocal principles and declarations of mutual security and respect among all the States of the continent;

That this feeling of security should be inspired from the

*) In the course of a remarkable speech opposing an American Customs Union, Saenz Peña, pronounced these words;

„I do not lack confidence in or gratitude towards Europe, I do not forget that Spain, our mother, is there contemplating with sincere rejoicings the development of her ancient territory through the energy of generous and manly people who inherited her blood; that Italy, our friend, is there, and France, our sister, who illuminates with the effigy of a goddess the harbour of New-York, linking the Continent, free *par excellence*, with the free section of democratic Europe, which has just called the world together on the *Champ de Mars* so as to inculcate the future republics of the Old World with the example of liberty.

I think that the laws of Society are leading nations to representative government as contemporaneous economy directs communities to freedom of trade. The nineteenth century has put us in possession of our political rights and ratified those acquired by our elder sister after struggles worthy of her sovereignty. Let the century of America, as the twentieth century is already called, behold our trade free with all the nations of the earth, witnessing the noble duel of untrammeled labor, in which it has been truly said God measures the ground, equalizes the weapons, and apportions the light. Let America be for mankind!'

very moment in which the representatives of the three Americas meet for the first time, so as to show that their acts and resolutions are in accordance with sentiments of mutual respect and cordiality;

The Conference being, also, desirous of giving assent to the principles which, to the honor of the strong States, have been established by public law for the support of the weak, and which are confirmed by the ethics of nations, and proclaimed by humanity, it is hereby declared:

First. That international arbitration is a principle of American public law to which the nations in this Conference bind themselves, for decision, not only in their questions on territorial limits, but also on all those in which arbitration be compatible with sovereignty.

Second. The armed occupation of the disputed territory without having first resorted to arbitration shall be considered contrary to the present declarations and to the engagements entered into thereby, but resistance offered to such act of occupation shall not have the same character.

Third. The arbitration may take place in an unipersonal form whenever the States agree to the selection of only one arbitrator; but if it takes place in a collective form there shall be appointed an equal number of judges by each party, with power to elect an umpire in case of disagreement, said election to be made at the first meeting of the tribunal.

Fourth. The election of arbitrators shall not be subject to any limitations nor exclusions; it may devolve either on the Governments represented in this Conference or on any other Government deserving the confidence of the parties, and also on scientific corporations or on high functionaries, either of the interested states themselves or of other neutral states.

Fifth. The present are applicable not only to differences which in the future may arise in the relations of the states, but also to those which in a direct form are now in actual discussion between the Governments; but the rules to be made shall have no bearing upon arbitrations already constituted.

Sixth. In cases of war a victory of arms shall not convey any rights to the territory of the conquered.

Seventh. The treaties of peace which put an end to the hostilities may fix the pecuniary indemnifications which the belligerents may owe to each other, but if they contain cessions or abandonment of territory they will not be concluded as far as this particular point is concerned, without the previous evacuation of the territory of the conquered power by the troops of the other belligerent.

Eighth. Acts of conquest, whether the object or the consequence of the war, shall be considered to be in violation of the public law of America."

On the 9th of April, the Committee, in which there were representatives of the United States, the Argentine Republic, Bolivia, Venezuela, Colombia and Guatemala, reported a plan of arbitration based on the above propositions; which in a modified form was adopted on the 19th of April.

In the session of the Conference of the 14th of that month, Salvador warmly seconded the plan and proposed that its provisions should be included in a treaty *ad referendum.*

Señor Quintana, the Argentine Delegate, afterwards President of the Republic, supported it eloquently saying:

„To the eye of international American law there are on the Continent neither great nor small nations. All are equally sovereign and independent; all equally worthy of consideration and respect.

The arbitration proposed is not, in consequence, a compact of abdication, of vassalage, or of submission. Before, as well as after its conclusion, all and each of the nations of America will preserve the exclusive direction of their political destinies, absolutely without interference by the others.

Neither does that plan create a council of Amphictyons, nor is it an American confederation compact, by virtue of which the majority of the nations adhering, assembled in continental Areopagus, can impose their judgments upon contending nations, nor even force them morally, and much less materially, to carry out the obligations contracted.

What that contract is, in reality, is the consecration of the friendship, confidence and fraternity of the American nations heartily determined to solve, by means of arbitration, all those questions not affecting their own independence; because the independence of one can never be submitted to the judgment of another, but should always continue to be guarded by national patriotism.

As a work of peace, of justice, and of concord, it does not rest, then, upon the strength of numbers nor the force of arms. It rest solely upon the public faith of the nations accepting it, upon the sense of dignity of each of them, and upon the moral responsibility incurred by any one which shall threaten this great work of civilization and of law, of the American mind and heart, faith, sense, and responsibility more respectable, nobler, and more efficient that the material strength of any one nation, however great and powerful.

There has thus been formulated a system of arbitration which is generally obligatory, but never compulsory through the action of any State not directly and exclusively interested in the case. If, contrary to all anticipations, all desires and all hopes, arbitration should be unduly declined in any

case and war break out between dissenting nations, the only thing left to the other nations, great or small in fact, but all equal before the law, is the mournful necessity of deploring the downfall of the noblest human aspirations; and no nation may claim, by virtue of the plan under discussion, the right to take part in the contest, except in the cases and within the limits in which international law authorizes the mediation or the good offices of any State maintaining good relations with the contending parties."

Mexico while recognizing the principles incorporated in the plan, considered that it went too far and in the remarks of Senor Romero, he made these several statements:

„In our treaties with the United States of America, we have agreed to the use of arbitration for the settlement of future difficulties between the two countries, and therefore the Mexican Government accepts arbitration as a principle of international American law with a view to settle differences among the nations of this continent, and therefore we will be glad to give our approval to the first article of the report.

As the Delegations here present have felt that while arbitration is acceptable as a principle and in general terms, there are also cases in which it might not be proper to excercise it; and one of the principal difficulties which appears in considering this subject is to define the exception without nullifying the principle itself.

The arbitration project presented to this Conference on the 15th of January last by the Delegations from the Argentine Republic and the United States of Brazil, excepts in its article 1, such questions as would affect *national sovereignty.* The project submitted by the United States Government to Mexico about the end of February last excepted such questions as would affect the territorial *integrity,* and the

report of the Committee has as an exception questions as might effect the *independence* of the contracting nations. The Mexican Government believes that besides this last exception another ought to be agreed upon for such questions as affect in a direct way the *national honor and dignity* of one of the contracting nations."

In regard to including in the treaty pending questions, Mexico was of the opinion that „It would be preferable not to embrace such questions, for many reasons which it would be, it seems, unnecessary to state. Arbitration ought to be accepted as a philosophical, humanitarian, and progresive measure, founded on principles of reason and public convenience; and it would be more easily accepted if it is presented in the abstract and without referring it to the decision of pending questions. From the moment that such questions have to be submitted to arbitration the bearing of this system changes radically and therefore its probable solution changes likewise", and as to Article VII referring to the organization of the Arbitration Court he pointed out that „its first two sentences are entirely acceptable, to wit, that in case the court is composed of one, two or more judges, all these shall be jointly selected by the nations concerned. The total sentence foresees the contingency when the nations concerned should not agree upon the appointment of one or more judges, and gives each nation *claiming a distinct interest* in the question at issue the right to appoint one arbitrator in its own behalf. The difficulty at once arises that if the interested nations are even in number, which is the most frequent case, as in a general rule questions arise between two nations, no majority could be had in a court with an even number of judges when opinion was equally divided.

The same article presents, besides, a new question, which is, in our opinion, very serious and of very difficult solution. It is possible, although it may not be a frequent case, that differences may spring up from the same question between more than two nations. If these differences should cause, before arbitration is accepted, a war, whatever might be the number of the nations concerned the question would be reduced to two sides only and all the nations would have to join one or other of the belligerents; as I do not know in any case of war between more than two nations where each of them had fought all the others. Whatever might be the interest of the nations concerned, all those having similar interests go on one side as against the oppossing interest of one or more nations. Under such circumstances, and once arbitration accepted, a case may be submitted in which each nation claiming to represent a distinct interest in the question at issue and appointing one judge in accordance with the provisions of Article VIII, the decision would be controlled by the number of interests affected and not on account of the importance of such interests and of the rights affecting the same, since on one side there were two or more States and on the other side only one, each being represented by a judge in the court of arbitration. A majority would be sure to be against the state which appeared alone.

This subject is so much more difficult to decide, since if it should be agreed that only two interests should be recognized in each question, whatever might be the number of nations affected, it might appear that two or more States would be represented by one judge; that is, would have equal representation to their opposing party, should this be a single State".

Chile objected to submit pending questions to arbitration

which would have included those arising from the war she had just fought succesfully against Peru and also to its obligatory form. From the document presented by its Delegates, Señores Vargas and Alfonso, the following paragraphs are quoted at length as giving a clear idea of the position of their country, maintained at this and the other Pan-American Conferences:

„Arbitration being recognized, as it is, as a principle of international law, cannot by any means become a guaranty of peace if its application does not correspond to its nature.

Its origin is the voluntary and free assent of the nations which find themselves in disagreement to trust to a third party the ascertainment and adjudication of their rights and interests: and its efficiency depends upon the respect, also voluntary, to be paid to its decisions, whatever be the obligations and sacrifices which it may impose. If arbitration is obligatory its own nature is thereby antagonized, and the moment it is forced upon the nations, its decsions will lose their efficiency and the excellence of the principle itself will become discredited.

We, the Delegates from Chili, do therefore declare that while we recognize as an absolute proposition the excellence of the principle of arbitration, we do not accept it as unconditional and obligatory. The Government of the Republic will in the future, as it has done in the past, resort to arbitration for the settlement of international conflicts or difficulties in which it may be involved whenever in its judgment the controversy or question may admit of such settlement.

We, the Delegates of Chili, are unwilling to entertain the illusion that any conflict which may directly affect the dignity or the honor of a nation can ever be submitted to

the decision of a third party. Judges will not be sought either in that case or in any other of analogous nature to decide whether a nation has the right to maintain her dignity or preserve her honor. For the defense of both all the elements of strength and resistance which may be counted upon will be called forth, and there is no temerity in asserting that a country ready to submit this class of questions to the decisions of an arbitrator would lack its *raison d'être.*

Moved by these considerations, the Delegation from Chili thinks itself right in asserting that the principle of absolute arbitration, applicable to all cases which may occur, may, notwithstanding its good purposes, become of doubtful application in grave international crises.

We must insist on this affirmation. A nation whose dignity has been wounded, or whose honor has been injured will never seek in arbitration the remedy for the offence. The principle of absolute arbitration no matter how congenial and sympathetic, when understood and applied in the way above stated, belongs, in our opinion, to the realm of illusions, and has against it the serious objection that it is inconsistent with the nature of things.

Said principle can not therefore be accepted without limitations.

This is our conviction, reached after attentive and mature consideration of the project.

Would it be advisable to enumerate those limitations? This is the question to which the answer to be given is difficult. It is not possible for anyone to foresee, or determine with exactness, all the cases in which the nature of the question permits of arbitration. All enumerations would be deficient, if not casuistic. This is the reason why in explaining

the exceptions, general and vague expressions are resorted to, they being the only ones which can in every contingency constitute a guaranty that the necessary liberty of action was preserved. It is not strange that exceptions, as the following, are formulated: The national sovereignty, the national dignity, and some others of similar import, which except from the obligation to submit to arbitration what can not be subject to arbitration.

The aplication of these principles has naturally to be left to the discretion and judgment of the nation which may have occasion to construe them, and which in each particular instance will determine whether the case which has presented itself is or in not included among them. And it cannot be otherwise, because if the decision is to be given by a third party the interested nation would sustain a detriment in its sovereignty, which can not be allowed. Otherwise the evil produced thereby would be undoubtedly still worse than the evil which it was attempted to correct.

The Government of Chili, in reserving its liberty to resort to arbitration in each particular case, does nothing else than to take shelter under one of these general provisions recently indicaded, whose purpose is to formulate an exception to the principle of arbitration. To say that arbitration will be resorted to whenever the conflict does not involve a point, for instance, of national dignity, and to say that the interested government shall decide whether the pending difficulty is of such a nature as to admit of settlement by arbitration, is in substance to say the same identical thing, because in both cases freedom of action is secured. The words may be and are indeed different, but the práctical effects of their application will be identical. And what is said with regard to one of those general provisions is

applicable to all others of the same character, it being self evident that the general idea, embodied in all of them, is consistent with the most complete latitude of appreciation.

Passing now to the consideration of this interesting matter from another point of view, we must state that, in order that obligatory arbitration may become an efficient rule in the international relations to which it is intended to be applied, it would be indispensable for it to secure a method of enforcement of awards of similar nature, rendered in cases of conflicts between individuals that is to say, the constitution of an authority, superior to both contracting parties, and to which they both submit. An obligation whose enforcement depends only upon the will of the party which contracted it — an obligation which has no other sanction than a moral one — to what can it be reduced in the frequent changes of Governments and administrations in the countries, which often imply, not only changes of opinion, but also, and very frequently, oblivion of former engagements?

It seems evident that war shall not be declared against the nation which having agreed to submit to arbitration all its international questions, without exception, should act, however, as if no such agreement had ever been made. It would be absurd and ridiculous that for the sake of securing permanent peace war should be undertaken. Would it be possible to constitute an authority superior to the nations which accepted the principle absolutely, to which the enforcement of the decision should be instructed?

This is a new difficulty, not less insuperable than the foregoing.

The Delegation from Chili answers the two questions negatively. Hence it may be doubted if such an authority could ever be constituted, whether in the form of a permanent tribunal, or in any other form.

The reason of this impossibility is obvious. The constitution of that authority would create a danger for the sovereignty of the nations which accepted it, and would be at all times a kind of constant threat against the same sovereignty.

The formation of a sovereign authority of this character, which by its own nature is incompatible with independence, provokes strong resistance among nations; and it is one of the gravest obstacles which have so far opposed the adoption of arbitration as a universal and absolute means of settlement of the conflicts arising among them.

The conclusion to be drawn from the foregoing statements is, that the preservation of peace and tranquility among the nations of America, which so legitimately preoccupies the Conference, must be found rather in the seriousness of the Governments, in the correctness of their action, and in their subjection to principles of justice and equity, than in purely moral engagements entered into by them. The Delegation of Chili believes itself authorized to state, in this respect, that it represents a nation and a Government which afford all necessary guaranty.

It would be superfluous to mention here the series of written treaties which, although destined to prevent war, have ended in provoking it.

If the idea of accepting arbitration, in all cases, and without exception, as a means of settlement of the difficulties between the nations should become an American international agreement no one can guaranty that some time afterwards the treaty made to that effect would not have the same fate as other international compacts entered into and concluded under more favorable circumstances.

It being impossible for man to cause the struggle of

conflicting interests, founded on the nature of things, on the conditions of humanity, to cease either between nations, or between individuals, one of the ideals of civilization would be, no doubt, to find out some manner of settlement satisfactory to all the contending parties.

The award of an arbitrator may be the last word in a controversy, but this will not destroy the germ which produced it. As a general rule, one of the contending parties generally deems itself to have been wronged, and it is not rash to state that the source of the disagreement remains latent.

It is a truth, which needs no demonstration, that a decision of award will never produce in the settlement of differences of whatever kind they may be, the same beneficial results, as are obtained from a voluntary agreement amicably concluded, especially if it is considered that that decision may very well not be in some cases, in accordance with the principles of justice, or perhaps even in volation of them.

It may be said, however, and very rightly, that it is not easy to reach at all times a voluntary and friendly settlement.

In cases of this kind it will be useful to resort to some means which may facilitate the desired agreement, and cause the disagreeing nations to come close together. enter into new deliberations, or prolong the proceedings already taken. In the opinion of the delegation from Chili this method consists of mediation.

The mediation of a Government friendly to the parties, with no interest in the contention, animated by a feeling of strict impartiality, offers the invaluable advantage of giving time to reflect and allowing the business in dispute to be more calmly considered. Mediation can furthermore contribute, when no direct arrangement is made, to efficiently

facilitate the reference to arbitration. In its own sphere of action it embraces all peaceful possible solutions.

For the reasons above stated the Government of Chili deems mediation, in the contentions just referred to, to be one of the best measures which can be suggested for the preservation of peace.

It is an arduous task to try to reach, at once, immediately, general and absolute arbitration. Experience teaches that serious and lasting works in the political sphere are always gradually and slowly accomplished. Passing rapidly, without transition, from one established system to another system essentially different, is to run the risk of soon coming back to the starting point.

The recommendation of a system of limited arbitration would have been sufficient for the moment, according to our judgment, for securing the humanitarian purpose which the conference desires to attain, and, as it is easy to understand, at once, it would have afforded greater facilities for the execution of the project than the absolute plan which has been submitted to the deliberation of this assembly."

And speaking as to the inclusion of existing questions which then divided some countries of America, the Chilean Delegation was of the opinion „that the Committee in attempting to give a larger sphere to its work, rendered it weaker. The commitee would have shown more foresight, if it had simply recommended arbitration for the future. Such action would have been more in harmony with the mission of promoting American union intrusted to the Conference."

In the session of the Conference, the day after, the President who was the Secretary of State of the United States, the Hon. James G. Blaine, in opening the discussion on the project, delivered this brilliant speech:

„There is no question of greater magnitude before the International American Conference than this which treats of saving the Republics of this Continent from the ravages of war and avoiding bloodshed often spilled in fruitless struggles and for unjustifiable motives. It is necessary gentlemen to put and end to these cruel sacrifices, too often witnessed in the New World, to the shame and horror of humanity and civilization. Let Europe if it so desires, and the rest of the world if it wishes it, continue to witness these scenes, protested against by honorable men; let the spectacle of ferocity and barbarity called war scandalize humanity, but, gentlemen, in our America, let this fatal plague cease; sweep away this scourge from our continent for the glory of our liberal institutions, and, by the liberty which we enjoy from one extreme of the continent to the other, add to this blessings the glory of peace which will augment its prestige, its prosperity, its credit and its honor.

So long as you delay to confer upon the peoples you represent this ineffable blessing, by opposing this measure, just so long do you thwart their desires, betray their confidence and their dearest interests. Civilization, humanity, and christianity cries out to us for this remedy of arbitration for all conflicts which may arise in the future between American nations; we are implored to use calm and impartial reason instead of having recourse to violence and the sword; we are warned not to consume the wealth of the people in belicose armaments but to use it for the promotion of general welfare. We are begged to annihilate in our hemisphere the horrible monster of discord and savage war, and for a crown to such a noble work, let us write over the ruins; these holy words: Fraternity, Peace, Justice!

This, Mr. President and gentlemen of the Conference, is

the desire and the vote which, in the name of my Government and of my country, in the matter under discussion, I offer to the International American Conference. Great will be the honor of this Conference, which will thus realize the most portentous and the most glorious of conquests, if, when it closes its sessions to-day its act chall close forever the period of armed revolutions and wars and leave America, free America, a single exception among political entities, reposing in the arms of perpetual peace and offer to the universe the grandest, the happiest and the most noble of examples."

The representatives from Honduras, Señor Zelaya, and of Paraguay, Señor Decoud, gave their support to the project of arbitration as formulated. Guatemala, through its Delegate Sr. Cruz, a member of the Committee which drafted the plan, explained some of its provisions as follows:

„What matters of dispute should be submitted to arbitration was the object of elaborate and interesting discussions in the committee. To take away the absolutely obligatory character of arbitration and make it independent solely upon the will of the parties concerned, allowing them to resort to it or to set it aside according to their wishes, would have been tantamount to having accomplished nothing. Arbitration must be as a rule obligatory, if not it will be nothing. When we say obligatory we do not mean that the recourse to it must be enforced by direct compulsion, but simply that said recourse must not be left to the discretion of the parties concerned. The nation's sovereignty can not admit of any coercion, nor could it be exercised without producing at once either a war, with all the evils which it is desired to avoid, or a fatal injury to the national character.

Controversies between private parties are settled by

tribunals which render decisions, and cause their decisions to be enforced, but nations in this respect are differently situated. This, in my judgment, does not in any way prove useless the obligatoriness of arbitration. Anything that a nation binds itself to do, or which it assumes, or recognizes to be its duty to accomplish, is and must be obligatory, even if there be no other guaranty than its promise. As among men of honor the pledged word is sacred, and has infinitely more force than fines or imprisonment; so among nations the signature of one of them affixed to a treaty supersedes all other guaranties.

The nation which has agreed to consider arbitration as obligatory for the settlement of all questions will certainly resort to it rather than to war, for the simple reason that she voluntarily bound herself to do so. She would naturally feel ashamed, and cause all other nations to be ashamed of her, if she attempted to violate an agreement freely entered into and solemnly recorded, for no other reason than her fancy, or because there is no means to compel her to keep her faith. He must have a poor opinion of the dignity of man, a poorer still of the dignity of nations, who believes that nothing can be obligatory except what can be enforced by actual compulsion. To such compulsion, nations can not be subjected; but even if they could, no sanction can be found more efficient than the moral obligation contracted by a sacred engagement, nor can any be stronger and more painful than the reprobation with which all the other Republics would brand the forehead of the nation which should thus trample upon the sacredness of international compacts.

When a nation says: I will fulfill this promise, we have to take it for granted that nothing is more binding than

her word. If doubts are entertained about her sincerity, the best thing is to refrain from any dealings with her. When the signatures of the representatives of the nations of America are affixed to a paper, absolute security can be felt that the nations represented by them will respect the engagement, and that they will never attempt to evade the full compliance therewith under the pretext that there is no power or authority capable of compeling them to fulfill it. For this reason the Committee has contented itself with setting forth the cases in which arbitration shall be obligatory, without recognizing or admitting its being carried into effect by compulsion.

The committee did not establish as an absolute principle that arbitration should be obligatory in all cases, except those involving a nation's independence, because it feared that if the article read in that way a more or less scrupulous interpretation of its language might lead to the discovery that national independence was involved in every controversy, and thus render arbitration nugatory. It decided accordingly, to make first of all an enumeration, as accurate as possible, of the questions subject to arbitration, which do not admit in any way whatever of the allegation that they involve the nation's independence; and upon this ground Article 3rd reads that „arbitration shall be obligatory in all questions corcerning diplomatic rights and privileges, boundaries, territories, indemnities, the right of navigation and the validity, construction, and enforcement of treaties."..... „In all the cases mentioned in Article 3 arbitration shall always be obligatory, and the exception that national independence is imperiled in them shall never be admitted. The committee, while acknowledging that no controversy which imperils that independence is a proper subject for arbitration, because no nation can allow

any one to sit in judgment on her national existence, holds however, that the cases set forth in the article above mentioned do not fall under the head of those in which national independence is imperiled. It really believes to have done something important in inscribing a certain number of cases, in which the exception referred to will never hold as I before stated, it was feared-as it is natural in matters of such importance-that the enumeration made in article 2 might be incomplete, and on this account it was found necessary to explain that, in addition to those cases, a resort to arbitration should be also obligatory in all others not enumerated in said article, whatever their cause, nature, or object might be. But then, the question may be asked whether after a provision general and broad enough as to cover all cases having been made, is there any use in making two articles, one of particular character covering only certain cases, and another, of general character applicable to all? The answer is this: In the cases enumerated in article 2 no exception is to be allowed, but in the others not enumerated therein, but included in the general provision, there is a limitation, consisting in the circumstance that the question to be settled does not involve or imperil the nation's independence, and this is a point to be determined solely by the nation itself which is the only legitimate judge for a question of such trascendent importance. In such a case a nation is entirely free of all obligation and engagement to submit the question to arbitration; and if she does submit it, it will be only because she wishes to do so.

The project exempts from arbitration only those cases in which the independence of the nation is involved; but it says nothing about cases affecting the national honor or dignity. To do otherwise would have been equivalent to

erase with one hand what the other hand had written. There is no question whatever which in some way or another does not affect the national honor and dignity; and to allow a recourse to war for those cases would be tantamount to having accomplished nothing. It might be that nations would judge of what affects their honor much in the same way as the duelists do: the most insignificant occurence would be magnified into a *casus belli*, just as a brawling swordsman might see an impeachment of his honor in a mere omision to salute him with sufficient courtesy, or in a look which his sensitiveness chose to consider an insulting one, or in many other kindred circumstances."

In regard to resorting to arbitration only in cases hereafter arising, Señor Cruz said:

„To submit to arbitration only these cases, and reserve all others arising out of facts already accomplished to be settled by the cannon in bloody conflicts would not give any evidence of real intention to preserve friendship, even if the agreement is sealed by fraternal embraces. If arbitration is humane, civilizing and worthy of adoption, why limit it to future questions and not make it applicable to the pending ones? The principle that laws can not be given retroactive effect rests upon the ground that rights already acquired can not be allowed to be endangered; but who could complain with reason when questions are settled by arbitration and not by Gattling guns? . . . .

But in making arbitration applicable to all questions, even the pending ones, it was not, nor could it be, the intention of the committee to reopen cases settled and terminated by final arrangements. Otherwise, instead of accomplishing the purpose of preserving peace, it would have caused conflicts now dead to be revived, and done

injury to acquired rights resting on final arrangements. What was settled in that way must remain settled. But, as some question may arise in regard to the validity of the agreements made, or the construction properly to be placed upon them, or their execution, then arbitration is to be resorted to for its settlement. Nor could it be orherwise, since arbitration is applicable to all future questions, and no possibility exists of preventing the new controversy from arising. And if it actually does arise, shall it be decided by war? Is it not clear that it, like all other questions, must be decided by arbitration? If the agreement was valid, it will be so decided; and if there is any doubt as to its real meaning, arbitration will determine which is the right construction to be placed upon it, and no injury will be done to any one."

The project was also supported by Sr. Zegarra of Peru who expressed the desire that the part regarding conquest should have been included, by Sr. Guzman of Nicaragua and by Mr. Hurtado of Colombia who stated that his Government had hoped for more than was expressed in the report.

On the 17th of April, the following text was finally approved by 16 Delegations voting in the affirmative: Hayti, Nicaragua, Peru, Guatemala, Colombia, Argentine Republic, Costa Rica, Paraguay, Brazil, Honduras, Mexico, with the reserve that its vote did not imply the acceptance of all the principles embraced in the several articles, Bolivia, Venezuela, Salvador, Ecuador and the United States. Chile abstained from voting:

„The Delegates from North, Central and South America, in Conference Assembled;

Believing that war is the most cruel, the most fruitless, and the most dangerous expedient for the settlement of international differences;

Recognizing that the growth of moral principles which govern political societies has created an earnest desire in favor of the amicable adjustment of such differences;

Animated by the conviction of the great moral and material benefits that peace offers to mankind, and trusting that the existing conditions of the respective nations are especially propitious for the adoption of arbitration as a substitute for armed struggles;

Convinced by reason of their friendly and cordial meeting in the present Conference that the American Republics, controlled alike by the principles, duties and responsibilities of popular Government, and bound together by vast and increasing mutual interests can, within the sphere of their own action, maintain the peace of the Continent, and the good will of all its inhabitants;

And considering it their duty to lend their assent to the lofty principles of peace which the most enlightened public sentiment of the world approves;

Do solemnly recommend all the Governments by which they are accredited, to conclude a uniform treaty of arbitration in the articles following:

Article I. The Republics of North, Central and South America hereby adopt arbitration as a principle of American International Law for the settlement of the differences, disputes or controversies that may arise between two or more of them.

Article II. Arbitration shall be obligatory in all controversies concerning Diplomatic and Consular privileges, boundaries, territories, indemnities, the right of navigation, and the validity, construction, and enforcement of treaties.

Article III. Arbitration shall be equally obligatory in all

cases other than those mentioned in the foregoing article, whatever may be their origin, nature or object, with the single exception mentioned in the next following article.

Article IV. The sole questions excepted from the provisions of the preceding articles, are those which, in the judgment of any one of the nations involved in the controversy, may imperil its independence. In which case, for such nation arbitration shall be optional: but it shall be obligatory upon the adversary Power.

Article V. All controversies or differences, whether pending or hereafter arising, shall be submitted to arbitration even though they may have originated in occurrences antedating the present treaty.

Article VI. No question shall be revived by virtue of this treaty, concerning which a definite agreement shall already have been reached. In such cases, arbitration shall be resorted to only for the settlement of questions concerning the validity, interpretation or enforcement of such agreements.

Article VII. The choice of arbitrators shall not be limited or confined to American States. Any Government may serve in the capacity of arbitrator, which maintains friendly relations with the nation opposed to the one selecting it. The office of arbitrator may also be entrusted to tribunals of justice, to scientific bodies, to public officials, or to private individuals, whether citizens or not of the States selecting them.

Article VIII. The Court of Arbitration may consist of one or more persons. If of one person, he shall be selected jointly by the nations concerned. If of several persons, their selection may be jointly made by the nations concerned. Should no choice be agreed upon, each nation showing a

distinct interest in the question at issue shall have the right to appoint one arbitrator on its own behalf.

Article IX. Whenever the Court shall consist of an even number of arbitrators, the nations concerned shall appoint an umpire, who shall decide all questions upon which the arbitrators may disagree. If the nations interested fail to agree in the selection of an umpire, such umpire shall be selected by the arbitrators already appointed.

Article X. The appointment of an umpire, and his acceptance, shall take place before the arbitrators enter upon the hearing of the questions in dispute.

Article XI. The umpire shall not act as a member of the Court, but his duties and powers shall be limited to the decision of questions, whether principal or incidental, upon which the arbitrators shall be unable to agree.

Article XII. Should an arbitrator or an umpire be prevented from serving by reason of death, resignation or other cause, such arbitrator or umpire shall be replaced by a substitute to be selected in the same manner in which the original arbitrator or umpire shall have been chosen.

Article XIII. The Court shall hold its sessions at such place as the parties in interest may agree upon, and in case of disagreement or failure to name a place the Court itself may determine the location.

Article XIV. When the Court shall consist of several arbitrators, a majority of the whole number may act, notwithstanding the absence or withdrawal of the minority. In such case the majority shall continue in the performance of their duties, until they shall have reached a final determination of the questions submitted for their consideration.

Article XV. The decision of a majority of the whole number of arbitrators shall be final both on the main and incidental issues, unless in the agreement to arbitrate it shall have been expressly provided that unanimity is essential.

Article XVI. The general expenses of arbitration proceedings shall be paid in equal proportions by the Governments that are parties thereto; but expenses incurred by either party in the preparation and prosecution of its case shall be defrayed by it individually.

Article XVII. Whenever disputes arise, the nations involved shall appoint courts of arbitration in accordance with the provisions of the preceding articles. Only by the mutual and free consent of all such nations may those provisions be disregarded, and courts of arbitration appointed under different arrangements.

Article XVIII. This treaty shall remain in force for twenty years from the date of the exchange of ratifications. After the expiration of that period, it shall continue in operation until one of the contracting parties shall have notified all the others of its desire to terminate it. In the event of such notice, the treaty shall continue obligatory upon the party giving it for one year thereafter, but the withdrawal of one or more nations shall not invalidate the treaty with respect to the other nations concerned.

Article XIX. This treaty shall be ratified by all the nations approving it according to their respective constitutional methods; and the ratifications shall be exchanged in the city of Washington, on or before the 1st day of May, A.D. 1891.

Any other nation may accept this treaty and become a party thereto by signing a copy thereof and depositing the same with the Government of the United States: whereupon the said Government shall communicate this fact to the other contracting parties."

In the same session the Conference recommended arbitration to settle all controversies between the Republics of America and the nations of Europe in the same friendly manner. The Committee on general welfare proposed the following declarations:

„I. That the principle of conquest shall never hereafter be recognized as admissible under American public law.

II. That all cession of territory made subsequent to the present declaration shall be absolutely void if made under threats of war or the presence of an armed force.

III. Any nation from which such cessions shall have been exacted may always demand that the question of the validity of the cessions so made shall be submmitted to arbitration.

IV. Any renunciation of the right to have recourse to arbitration shall be null and void whatever the time, circumstances, and conditions under which such renunciation shall have been made."

They were adopted in their entirety by the Argentine Republic, Bolivia and Venezuela.

Colombia, Brazil and Guatemala which were members of the Committee, adopted only the first declaration and Chili abstained from voting or taking part in the debate.

The United States of America expressed its views as follows:

„Whereas, In the opinion of this conference, wars waged

in the spirit of aggression or for the purpose of conquest should receive the condemnation of the civilized world; therefore

„*Resolved*, That if any one of the nations signing the treaty of arbitration proposed by the confernece, shall wrongfully and in disregard of the provisions of said treaty, prosecute war against another party thereto, such nation shall have no right to seize or hold property by way of conquest from its adversary".

The report of the Committee was finally adopted, the following 15 Delegations voting in the affirmative: Hayti, Nicaragua, Peru, Guatemala, Colombia, Argentine Republic, Costa Rica, Paraguay, Brazil, Honduras, Mexico, Bolivia, Venezuela, Salvador and Ecuador, it being warmly supported by Peru. The United States voted in the negative while Chili abstained. Finally the vote of the United States was secured with the following text, presented by Mr. Blaine, and unanimously agreed upon with the exception of Chile which did not vote:

„1. That the principle of conquest shall not, during the continuance of the treaty of arbitration, be recognized as admissible under American public law.

2. That all cessions of territory made during the continuance of the treaty of arbitration shall be void if made under threats of war or the presence of armed force.

3. Any nation from which such cessions shall be exacted may demand that the validity of the cessions so made shall be submitted to arbitration.

4. Any renunciation of the right to arbitration made under the conditions named in the second section shall be null and void".

Mr. Blaine in his farewell address to the Conference, on April 19th 1890, referring to the preceding plan of arbitration, said:

„If, in this closing hour, the Conference had but one deed to celebrate, we should dare call the world's attention to the deliberate, confident, solemn dedication of two great Continents to peace, and to the prosperity wich has peace for its foundation. We hold up this new Magna Charta, which abolished war and substitutes arbitration between the American Republics, as the first and great fruit of the International American Conference. That noblest of Americans, the aged poet and philanthropist, Whittier, is the first to send his salutation and his benediction, declaring:

„If in the spirit of peace the American Conference agrees upon a rule of arbitration which shall make war in this hemisphere well nigh impossible, its sessions will prove one of the most important events in the history of the world."

President Harrison in his message of the 3rd of Sept. 1890, to the Senate of the United States, said that the ratifications of these treaties would be one of the happiest and most hopeful incidents of the history of the Western Hemiphere; but they were never ratified nor received the approval of the other States whose representatives adopted them.

CHAPTER III.

1901 — 1902.

SECOND PAN-AMERICAN CONFERENCE. MEXICO.

On the 15th of August 1900 the Government of Mexico invited all the Governments of America to meet in October 1901, in the Capital of the Republic, for the Second Pan-American Conference. It lasted from October the 22nd, 1901, to January 31st, 1902, the following countries being represented: the Argentine Republic, Bolivia, Brazil, Colombia, Costa Rica, Chili, the Dominican Republic, Ecuador, Salvador, the United States of America, Guatemala, Hayti, Honduras, Mexico, Nicaragua, Paraguay, Peru, Uruguay and Venezuela.

Among the subjects of the Programme were II Arbitration and III an International Court of Claims. As to arbitration as a principle there was unanimity, but a great difference of opinion was manifested as to how far the principle should be carried out. Peru wanted a treaty without any reservations and to include pending questions. Mexico excepted those which referred to the „independece" or the „national honor of a country", wishing, however, to define a list of subjects not included in „national honor". Venezuela reserved the question involving her rivers; and Chili in view of problems, yet unresolved, of the war with Peru opposed any arbitration which might be retroactive and obligatory; three views were supported in the Conference.

(1) Obligatory arbitration, covering all questions pending or future when they did not affect either the independence or the national honor of a country.

(2) Obligatory arbitration, covering future questions only and defining what questions shall contitute those to be excepted from arbitration: and

(3) Facultative or voluntary arbitration, as best expressed by The Hague convention.

The Delegation of the United States, among the instructions given to it by President Roosevelt, dated the 8th of October 1901, had the following;

2. *Arbitration.* — The Government of the United States is favorable to the pacific settlement of international disputes and will be gratified to see provision for such settlement promoted and applied wherever practicable. In the discussion of this subject and in the formation of any convention that may be proposed relating to it, the commission will be guided by the following general principles: (1) All arbitration should be voluntary; (2) the choice of judges should be left to mutual agreement; (3) the locality in which a tribunal of arbitration is to act, in case one should be instituted, should not be definitely prescribed in a general convention.

3. *The disputes between Peru and Chili.* — While the policy of the United States in advocating the pacific settlement of disputes should be strongly impressed upon our delegates and clearly expressed by them upon proper occasion in the conference, and while the attitude and declarations of the United States at The Hague demonstrate the interest of our Government in providing an international forum whereby two States engaged in a controversy otherwise irreconcilable may have open to them a judicial means of determining the issue according to the principles of justice

and with honor to both, it is not the province of a voluntary conference to enforce the employment of these honorable means of settling differences. As regards the present disputes between Peru and Chili, therefore, we can not support the view which would assert the competence of this conference to assume the responsibilities of an arbitral board by taking cognizance of these disputes and providing in terms of their settlement. The delegation of the United States could not properly join in the assumption of any such function by the conference unless it should appear that such action were to be taken upon the request of both parties for the exercise of its good offices.

The delegates will, therefore, as their prudence may dictate, give such support to the principle of the pacific settlement of disputes as the occasion may seem to justify; but they will refrain from any effort to have the conference take cognizance of any existing controversy with a view to its settlement, unless the good offices of that body are invoked by both the opposing parties. If such a controversy is brought by others before the conference, they will do all in their power to preserve general harmony, and will maintain a strict neutrality."

The attitude of the United States, according to Mr. Buchanan, Chairman of the American Delegation who so tactfully contributed to bring about results at the Second and Third Pan-American Conferences, and Delegate to The Hague, was as follows:

„The position of the United States delegation — that of opposition to an obligatory treaty — was looked upon as strange, since at the first conference our delegation advocated and voted for obligatory arbitration, whereas Mexico and Chili did not. Since that time, however, we seem as a

people to have agreed that while obligatory arbitration might be a blessing to the world if carried out, that it is impracticable between nations owing to the absence of any motive power to bring about its use outside the two countries interested, since no matter what the character of the obligatory clause might be, there exists no power to force a country to carry out a general treaty obligation to arbitrate a case when it is believed its independence, its national life or interests would be jeopardized by such a recourse. Indeed, this view is apparently becoming well established, since but few of the seemingly large number of so-called obligatory arbitration treaties that have been signed during late years merit that classification, referring as they do in a majority of cases only to specific questions clearly understood and outlined by and between the signatory countries." (*)

A memorable battle was waged in the Conference by the friends and opponents of obligatory arbitration.

Mexico on the 6th of November 1901, presented a complete draft of a treaty which contained provisions as to mediation, international commissions of inquiry, a permanent court of arbitration which was to have its seat in Quito, capital of Ecuador, based on the equality of all the nations, and of arbitral procedure. Under title III were the following articles:

Article 15. The nations of North, Central and South America adopt arbitration as a principle of American International Law.

Article 16. The Republics of North, Central and South America, bind themselves to submit to the decision of arbitrators all the controversies which may arise between them and which can not be settled by diplomatic channels,

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(*) The Annals of the American Academy, Philadelphia 1906, page 53.

provided that, in the exclusive opinion of any of the interested nations, said controversies do not affect either the independence or national honor. Arbitration shall be obligatory for pending controversies which at the moment of signature or ratification of the present treaty, may not be the object of a special reservation on the part of some of the interested states.

Article 17. Independence or national honor, for the effects of this treaty, shall not be considered to include controversies which may arise in the following cases:

I. When it is a case of pecuniary damages and injuries suffered by a country or by its citizens or subjects, on account of illegal acts or omissions of another country or of its citizens or subjects;

II. When it is a case of the simple interpretation of the fulfillment of some of the treaties which follow;

(a) Those which treat of international protection of the great arteries of universal circulation, or of the intellectual and moral interests of any of the high contracting parties;

(b) Those which may be concluded to put in effect principles of private, civil or penal international law;

(c) Those of commercial reciprocity and monetary ones;

(d) Those which refer to the rules and regulations of international waters and fisheries;

(e) Those of international boundaries, provided that the controversies refer to purely technical questions.

Article 18. In the controversies which may arise between the nations of North, Central and South America. which may affect independence or national honour, arbitration shall be voluntary for the nation which considers itself offended, and in every case obligatory for the offender."

The Argentine Republic ratified the views which it had always maintained in regard to arbitration, and repeated „that with treaties or without them the Argentine Government was determined to settle all international questions by arbitration". Paraguay declared, through Sr. Baez, that it considered arbitration as the regulating principle of the international relations of America and condemned conquests.

Sr. Guachalla of Bolivia, Delegate to the Second Hague Peace Conference who has just been elected President of his Country, in a happy speech about the efforts of the Delegations of the United States and Mexico, to bring about harmony said;

„To their constant efforts is due that the expressive emblem placed over the presidential chair with the motto „Pax, Lex" has been realized, because the adoption of arbitration as an American principle means safety and equity that love and peace will bring about for the welfare of the nations. I wish, honorable delegates, in my own name and in that of my country and Government, that, before we leave this noble and hospitable country, to which we owe inexpressible gratitude - because I lack words to express it - at any rate on my part, I wish that we could say very loudly that the principle of Arbitration has not been a failure in the Second International Conference; and that its white flag is waving over the summit of the mountains, over the waves of the sea and the rivers, over the whole continent, under the serene and cloudless sky of harmony and mutual

respect, of peace, and of the brotherhood of all the countries of America".

On January 14th 1902, the Delegation of Chili, represented by Señores Blest Gana, Joaquin Walker Martinez, Bello Codecido and Augusto Matte, Delegate to the Second Hague Peace Conference, presented a full exposé of the views of their Government against obligatory arbitration, reaffirming the one submitted at the Washington Conference; some of its most salient paragraphs are:

„In order to solve, in a proper manner, the question whether compulsory arbitration should be declared as the best means of deciding international conflicts, as it is proposed, we should not examine it in the light of a useful and desirable institution, because such a task belongs principally to public writers. The only thing which pertains to us, as diplomats, to ascertain is: If in the present state of affairs it is possible to solve by arbitration all kinds of controversies among the nations, or only some of them; if it is objectionable in some cases, and to what degree it sacrifices the independence of the nations, and, finally, to what point can it surely prevent armed conflicts and the best means of settling them peacefully.

If it were as easy, as it is pretended, replace the cruel measures of war by the humane and civilizing one of arbitration, no nation would hesitate to limit its sovereign right before so grand an institution. But if the advantages and benefits are not manifestly apparent; if arbitration is not sufficient to settle all kinds of disputes, and especially those which are the causes of wars, only few States would be disposed voluntarily to diminish their sovereignty, which is the indispensable condition of their existence, in exchange for a principle of such problematic results.

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There are, of course questions which do not admit of arbitration in any form whatever. Among them are those affecting the independence, integrity, or sovereignty of a nation. Each country is the only judge of its independence and sovereignty. An indeclinable duty compels it to defend the origin and reason of its existence, with all the elements all the forces, and all the energy of which it can avail. To abandon its sacred duty to a stranger's criterion would render such country unworthy of forming part in the concert of the nations which pride themselves of their sovereign independence.

What is said of questions relating to the independence and sovereignty of States also applies, for the same reason, to those questions affecting their dignity, honor, or their most vital interests. As there is an individual honor there exists also a national honor. This sentiment is the source of the prestige of nations and at the same time the safest factor of their preservation and one of the most powerful elements of their moral and material progress.

This sentiment is based on public conscience, it is an inseparable part of the national character, and a question which refers to it can not be submitted to arbitral decision. It would be preposterous to pretend that a State should renounce to its national sentiment and to its right to be the sole judge of its destinies, in such cases when its safety is at stake, and when inevitably it becomes its duty to show all its energy and all its dignity. No case is found in the history of diplomacy where such questions have been submitted to the decision of arbitrators.

This explains why in all permanent arbitration treaties recorded in the history of diplomacy, but with few exceptions, questions derogatory to the honor, dignity, and vital

interests of nations are excluded from such recourse.

. . . . . .

It is also rightly held that conflicts of a political character are not susceptible of arbitration, for in questions of this nature elements of very complex and varied kind are involved, which are difficult to define in a precise manner, and hence of impossible decision according to law, as all arbitral decisions must be. Only in questions of a legal character which can be formulated and decided judicially may the solution be reached through these means.

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In effect, if the questions which involve the honor and dignity of one of the nations or its primordial interests, are excluded from compulsory arbitration, the difficulty which naturally presents itself is that of knowing, when in a specific dispute any of those essential principles are involved, and when, consequently, the interested party may decline arbitration.

There exists no method of pointing out distinctly the cases in which those interests are at stake. It is not possible either to establish a rule in this respect, because the circumstances under which a litigation is brought about determine its character. In this conflict of ideas that which is of small importance to one State may seriously affect another in its dignity or its vital interests. A very suggestive example of this is found in the allegations made by the United States to the committee of the third section of The Hague Conference, when they asked to eliminate from compulsory arbitration all that which refers to interoceanic canals. And while that Republic alleged that the question affected its most important interests, the other countries

therein represented manifested that they had no interests whatever in the matter.

There is no other solution to the aforesaid difficulty but that every State be, in each particular case, the sole judge to decide when a question affects its honor, or its vital interests, and when it is therefore warranted in rejecting arbitration. That decision must be solved by each State, because to submit to an arbitrator a question of such a vital interest would be equivalent to place the States under a foreign tutelage, which it is impossible to accept. It would imply in fact the complete abdication of their sovereign rights.

Endeavors have been made to solve this serious difficulty by an enumeration of cased designated beforehand as exempted from all connection with those which affect natural honor, but these enumerations are of such slight importance as to leave the difficulty untouched.

From these considerations is to be deduced that it rests exclusively on the decision of the States whether any question comes within the scope of those which affect its honor or vital interests, which amounts in reality to the same thing as not to have agreed on compulsory arbitration.

V. Other objections exist to render impossible compulsory arbitration.

The first is that it always limits the sovereignty of a State, because it places the latter in the condition of whoever renounces blindly to his rights, no matter how absurd the difficulties which may arise and surrenders unconditionally to a strange judgment. No man exposes his individual rights with such indiscretion. Much less of course it is possible to recommend to nations such an indiscretion.

The second objection refers to the fact that international

difficulties often present themselves surrounded with peculiar circumstances which excite national public sentiment, and in such cases the people's will does not consent to be subjected to a foreign criterion. In such emergency, the existence of an agreement of general and compulsory arbitration would compel the Government to avoid its compliance under pretexts or reasons which would bring more serious and unavoidable conflicts. Or if the State binds itself to carry out the agreement and becomes a slave of its word submitting to arbitration matters, which it would not have submitted voluntarily to the resolution of a third party, the conflict might be according to law, but never in reality. It is not sufficiently settled that a question once passed upon by arbitrators, the decision will be accepted by the people. A decision must reconcile the opposing interests, temper rivalries, and calm passionate sentiments; otherwise conflicts will subsist and war will necessarily result, if no appeal be made, in order to avoid it, to more efficacious means, as circumstances may indicate.

Experience has demonstrated how inexpedient it is to agree to compulsory arbitration in general.

The history of diplomacy abounds in practial examples to the effect that many times, notwithstanding that arbitration has been agreed upon as a means to avoid conflicts, such an obligation has not been sufficiently enough to avoid them; or if arbitration has been carried out it has been through efforts made outside of the agreement, thus giving to it, in reality, the character of a new, voluntary act. There are even some cases, and others may occur yet, in which a conflict may be peacefully decided through means outside of the provisions agreed upon, and wich may arise from special circumstances not considered at the time of the agreement.

This exposition would become too extensive if the above ideas which have been proven by facts were to be amplified.

We all know the precedents which can be cited in confirmation of these statements through mere reference to the diplomatic history of the last few years and without going beyond the limits of Spanish America.

Nor is compulsory arbitration so efficacious, as pretended, to prevent wars. They arise through political questions, in which the national sentiment of a nation always forms a part, and such cases, as previously stated, can not be decided by arbitration.

Furthermore, such a course is slow by its own nature. An arbitrator must arrive at a full knowledge of the causes of the contentions, after an investigation which necessarily must take some time, while the conflict, which at first may have been easy to prevent, may in the meantime have reached its extreme limit through unavoidable complications emanating from the sensitiveness of the nation, and may then bring on war before it has been possible to avoid it by arbitration.

It has been claimed that compulsory arbitration has in favor of its efficacy the numerous cases of international treaties in which it has been considered as the fundamental basis and the only means for the solution of conflicts. But if a careful examination of this argument is made by studying all such cases a conviction will be acquired that the countries among which such means have been stipulated are those in which it is very improbable that a conflict should acquire the proportions af a casus belli.

Arbitrations forces itself under such circumstances as the best means for solutions, not because it has been agreed upon beforehand, but by the course of events.

With regard to powerful countries among which conflicts may arise leading them to war, the fact is that they have not entered into general treaties of compulsory arbitration, and when they have intended to do so they have met with unsurmountable difficulties in public opinion and in their respective parliaments.

Experience, as the best standard that regulates the principles of international law, has demonstrated that no matter how much the number of treaties of compulsory and general arbitration is increased their application in practice is limited to questions not affecting public sentiment and which can not be a cause of war.

VI. Based on the real tendencies in the life of the people and on the teachings of experience, all the above considerations lead to this practical result: That when a conflict arises between two states it is indispensable that each should enjoy sufficient freedom to calculate the importance and nature of the conflict and to think over the expediency of deciding it peacefully, as compared with the dangers of a war and with the importance of the interests at stake. Prudence is every day considered more, by the goverments, as the most important factor to avoid events whose economical and social consequences may be incalculable.

A well-devised policy, therefore, counsels that no previous compromise should be made to solve all the conflicts that may occur, by a specific method. The States should, on the contrary, always reserve to themselves perfect liberty of criterion for the best solution of special cases. In other words, the benefits of arbitration are real and practicable only when it is optional; that is to say, when the contending Governments may have selected it in each special circumstance

as the most suitable means for the solution of the conflict. Only in this way will its results leave no ill-will among the respective nations.

It was thus decided by the Conference of The Hague in 1899, which was considered as one of the most notable of those that had sought for the ideal of peace.

Leaving aside, exaggerated aspirations and utopian theories, the men there gathered together, combining the most enlightened intellects of the diplomatic world and the representatives of the most powerful nations, disregarded theories formed beforehand, and even historical rivalries, in order to seek, in the field of the actual interests of the people for what might be practicable and compatible with the common necessities, so as to establish, as far as possible, the reign of peace.

And there it was resolved that, in view of the present condition of international relations, the institution of arbitration should always have an optional character.

That Conference took good care not to fall into the error of establishing the paradoxical result in which some writers and some Governments have fallen in, believing that because optional arbitration has produced good results, it should, for that reason, be made compulsory.

That Conference, with clear judgment, applied the lesson derived from practice to the case under consideration and boldly abandoned as premature at least, that illusion of universal peace and was satisfied in recommending by means of resolutions which bear the stamp of good sense and modesty in its aspirations, the only thing that was practical and feasible.

To this rule the Republic which we represent has adjusted its policy in the differences which it has had with other

countries, and it was inspired by this rule of conduct in expressing its ideas in the Conference at Washington in 1889 with respect to the matter of arbitration. And if it is true that the vote of its representative found itself alone in that assembly, it is also true that the posterior resolutions of all the foreign departments were in accord with the position of Chili, inasmuch as they did not ratify the treaty to which Chili refused her assent.

Our diplomatic history is full of examples which prove the constancy with which the Chilian foreign department has faithfully practiced the policy indicated.

Therefore in declaring ourselves, both in the Conference of 1899 and in the present one, as decided partisans of optional arbitration, though combating it in its compulsory character, we do not assert a new theory in our diplomacy, but we rather support the rule of conduct which our country has invariably followed since 1823 in its relations with the other states.

VII. The Hague Conference did not limit its work to the principle of optional arbitration. It further recommended and formulated other measures which are very efficacious to prevent armed conflicts, such as good offices and mediation; it therefore resolved, once again, that nations cannot bind themselves beforehand to resolve all their differences by specific methods.

These methods are free from the objections of arbitration, and therefore their superiority is obvious in many cases where they may have to settle international questions.

In fact, these measures are by their nature always susceptible of application. By reason of their simplicity and efficacy they usually put a stop to all controversies, even

to those of a political character, when, as we have said, arbitration is not applicable.

Good offices and mediation begin their conciliatory effects from the moment they are put into practice, thus taking away from a question the sharp acrimonious character with which it might be presented or which it might assume later on, and lead in a more or less rapid manner to a solution satisfactory for the contending parties.

The action of these measures is further intended not to decide a contest, as does arbitration, in a sententious manner, but in adapting itself to circumstances and trying to obtain an advantage in every case, arriving at definitive solutions which meet the assent of both parties, and cause the conflict to radically disappear. The solution is in this manner the more efficacious, as it is not the result of an irrevocable decision, but of the conviction it produces in the respective Governments that the settlement which is proposed to them is one which is best calculated for the interest of each one.

Actual occurrences have contributed, during a long series of years, to confirm the efficacy of good offices and of mediation for the purpose of solving the gravest international questions. The recurrence to this method of deciding disputes has been stipulated in numerous treaties, among them deserving to be mentioned the treaty of Paris of the 30th of March, 1856, and the general act of the conference of Berlin of the 25th of February, 1885. The former in its article 8 and the latter in its articles 11 and 12 have established the importance of these measures, and have accorded to them place of preference among those that can be employed for the deciding of disputes.

The Russian project submitted to the Conference of The Hague, in its articles 1 to 7, and the convention which

resulted from the labors of that Conference, in its articles 2 to 9, are also examples which should be cited in this strain of ideas, of which we believe it useless to enter upon further consideration.

The delegation of Chile, relying on the above considerations, believes that the conventions approved by the International Conference of Peace held at The Hague are the surest and most advanced measures known to the science of international law, and has the honor of proposing to the Second International American Conference the following:

Bases for a convention. The States represented in the Second International American Conference resolve.

„First. To adhere to the conventions signed at The Hague by the powers which formed part of the international peace conference, for 'the peaceful settlement of international conflicts;' for the 'application of the principles of the convention of Geneva, of the 22d of August, 1864, relating to maritime wars;' and 'relating to the laws and usages of wars on land.'

„Second. To recommend for that purpose to the action of the Governments of the United States of America and of the United States of Mexico the steps that are to be taken with regard to the adherence of the powers which have not signed this treaty."

On January 21st, the Peruvian Delegation consisting of Señores Alzamorra, Alvarez Calderon and Elmore presented the views of their Government with regard to the treaty of compulsory arbitration; of this report which is in itself a valuable historical sketch of the principle in Latin America we give the following full extract:

„It is true, generally speaking, that the resolutions, the

recommendations, and treaties resulting from these collective labors (*) have either not been ratified by all the nations or have not been strictly observed. But we recollect them, in order to demonstrate the existence of a permanent sentiment, of an invariable opinion in this part of the world. It is evident that if the acts referred to had been carried into effect the problem of peace and justice would have been solved in America, and would not now occupy our attention. But it has to be observed that from this relative lack of efficacy of these repeated endeavors, we should not argue their inopportunity nor the necessity of abandoning them. Such would be equivalent to declaring that the penal laws of all nations were useless, because they had not succeeded in exterminating crime.

Nor can it be said, strictly speaking, that the aspiration toward the establishment of arbitration had been disappointed by actual facts. There exist at least sixty treaties actually concluded, in which arbitration among American nations has been established, either for special cases, or as a compromising clause, or as a permanent institution. There exist at the same time treaties between our countries and European nations, and lastly some cases can be cited in which the proceedings of arbitration have been effected and the sentence has put an end to conflicts of boundaries or of other nature which threatened to disturb peace.

It seems to us that if that great number of compulsory arbitration agreements is considered as a whole, there is enough reason to assure that the question is settled in America, and that it only remains to gather from all the agreements signed the points in common, which can be

(*) Refers to the labors of previous Congresses where Arbitration as a compulsory rule had been the subject of the deliberations.

susceptible of being converted by this conference into rules of a general character.

The international congresses do not in fact create laws, but they have two lofty purposes, which justify the relative frequency of their assembling in Europe and America. International congresses must investigate, within the limit of the matters on their programmes, all the stipulations provided for by the States in their treaties, in a more or less lengthy period, and which reveal a definite juridical system. Congresses are destined in such cases to convert separate practices into rules of actual law, applicable to the groups of the nations which form them. Apart from this, which is very important, congresses will not lose sight of the ideals of international law, for, although political interests may resist for a certain time the sanction of broad principles, the duty of the conferences is to proclaim them and to recommend their adoption.

With regard to compulsory arbitration the duties of the conference can not be avoided. It is necessary to at once acknowledge that that institution, with its compulsory character, is not any more a simple doctrine. or a mere aspiration of writers and noble minds, but has been converted into an indisputable national practice. There are very few nations in the world which on account of temporary reasons reject compulsory arbitration. Confining ourselves to America, from the United States of North America to Argentina and Chile, all the Republics have agreed to it at different times. Europe has also of late given a proof of the advance made by international law, notwithstanding the political conditions of that continent. The Peace Conference of The Hague virtually sanctioned compulsory arbitration. The Russian project proposed it, and the third committee, to whose consideration it was

submitted, warmly approved it. After its acceptance the delegate for the German Empire received instructions which dit not permit him to sign the respective treaty, and the committee then declared that the other countries gave up their opinions and their desires to advance further in the matter of arbitration, in recognition of the necessity of arriving at a unanimous resolution. The committee then confirmed the private treaties of compulsory arbitration between the countries that formed the conference and drafted a clause appealing to the same nations to bind themselves, in a general and permanent manner, to submit all controversies of juridical nature to arbitration. „The character of that provision which has been, on account of circumstances, necessary to adopt," said Chevalier Descamps, „imposes sacrifices on the States which are resolved to take a step, though a prudent one, in the manner indicated by the Russian delegation. But it is nevertheless necessary to state that the field remains open to further endeavors in that direction." And the reporting committee added: „The proposition as adopted (which excludes compulsory arbitration) is a vote of compromise animated by the desires to reach a unanimous agreement."

This means, in plain words, that there was no reason why compulsory arbitration should be rejected as utopian or as an impracticable doctrine. It was, on the contrary, acknowledged by eminent scientific authorities, and by representatives of the most powerful European nations, and had not special motives existed which affected only one of these nations, it surely would have been sanctioned as a rule of positive European law, Unfortunately that was not so, and the treaty for arbitration of The Hague did not attain all its importance, and, if considered in its tech-

nical and political sense, it simply means a method employed to temporize with a peculiar opposition and to elude, in fact, the question of effective arbitration as a permanent institution.

These historical antecedents demonstrate two things: First, that considering the Conference of The Hague, in the light of an authorized manifestation of technical and political opinions, it is clearly wrong to say that that conference condemned compulsory arbitration or considered it as premature and inapplicable; and second, that the treaty of arbitration of The Hague, as a juridical document, is not certainly a standard worthy of imitation in America, as its own authors declared it to be a formula for European compromise, which implied the sacrifice of more advanced desires by which most of the nations represented were inspired.

The only thing to be discussed in the matter of arbitration is the scope to be given to it, considering the nature of the subjects to be treated.

The question of time — that is to say, if it is to cover present and future questions — has not given rise to serious controversies. At the Conference of The Hague, the 26 nations there assembled accepted the idea of arbitration, including present and future conflicts. The committee of arbitration on the subject was very explicit. The States, it said, endeavor to protect themselves against their own future impulses by adopting means for peaceful solutions before the commencement of litigations and by adopting at certain points of their relations a conditional peace, supported by a treaty. The binding stipulation can also be generic, and may then include the whole, or, at least, the greater part, of litigations between nations. The general treaty of arbitration is a truly organic contract of juridical

peace — a positive recognition of arbitral justice, as a proper and normal means accepted, beforehand for the solution of international litigations.

The present state of positive international law, from the point of view of the different scope of the contract of arbitration is characterized, concluded the committee of arbitration, by the following treaties:

1. Progressive increase in the number of agreements wherein are to be found appeals to arbitration for present solutions.

2. Multiplicity of arbitrations of binding stipulations, keeping in view particular series, more or less numerous, of eventual solutions.

3. Conclusion of certain conventions, extending the binding stipulations, whether it be to all litigations between nations without exception, or to all these litigations, under a reservation considered necessary with regard to an order of solutions which the States may not think they can leave to the eventuality of arbitration.

Long before the congress of The Hague the same opinion was adopted in Washington, without any dissent except on the part of Chili, which neither accepted the obligation of arbitration nor much less agreed that in any case could it include present controversies. On the other hand, the treaties of permanent arbitration which are known, instead of excluding present controversies, have been decided upon precisely by the necessity of peacefully terminating some present conflicts.

. . . . . .

The question of extension on account of the nature of the subjects is, doubtless, the most arduous point in arbitration. If we were to base ourselves upon American traditions, we

would say that it would be consistent to agree on general arbitration without excluding questions of any kind. There are numerous examples with regard to these matters The treaty entered into on September 22, 1829, between Colombia and Peru, submitted to arbitral decision all questions even those called of honor. This treaty stated: „Whatever the motives for disagreements arising between two republics may be, on account of complaints of insults, offenses or damages of any kind, neither of said republics can authorize acts of reprisals nor declare war against the other without previously submitting their differences to the Government of a power friendly to both nations". The treaty of 1832 between Ecuador and Peru also submitted any disagreement which may arise between the Peruvian Republic and the State of Ecuador to the decision of an arbitral power. General stipulations, without any specified exceptions, are also found in the following treaties:

1. In that af 1842 between Venezuela and New Granada.
2. In that of 1845 between Guatemala and Honduras.
3. In that of 1848 between the United States of America and the United States of Mexico.
4. In that of 1850 between Costa Rica and Honduras.
5. In that of 1855 between Salvador and Colombia.
6. In that of 1856 between New Granada and Ecuador.
7. In that of 1858 between New Granada and Peru.
8. In that of 1858 between the Argentine Republic and Bolivia.
9. In that of 1860 between Ecuador and Peru.
10. In that of 1861 between Nicaragua and Costa Rica.
11. In that of 1862 between Guatemala and Nicaragua.
12. In that of 1863 between Bolivia and Peru,
13. In that of 1865 between Costa Rica and Colombia.

14. In that of 1867 between Bolivia, Chile, and Ecuador.

15. In that of 1868 between Costa Rica and Nicaragua.

16. In that of 1870 between Colombia and Peru.

17. In that of 1872 between Guatemala, Honduras, Salvador, and Costa Rica.

18. In that of 1874 between the Argentine Republic and Peru.

19. In that of 1876 between the Argentine Republic and Paraguay.

20. In that of 1876 between Bolivia and Peru.

21. In that of 1880 between Salvador and Colombia.

22. In that of 1882 between Salvador and Santo Domingo.

23. In that of 1883 between Uruguay and Salvador.

24. In that of 1883 between Paraguay and Uruguay.

25, In that of 1883 between Salvador and Venezuela.

26. In that of 1884 between Costa Rica and Nicaragua.

27. In that of 1885 between Guatemala, San Salvador, and Honduras.

28. In that of 1887 between the five Republics of Central America.

29. In the official protocolized conference subscribed in 1887 by the Argentine Republic, Bolivia, Colombia, Ecuador, Peru, Salvador, Santo Domingo and Venezuela.

30. In that of 1888 between Mexico and Ecuador.

31. In that of 1890 between Ecuador and Costa Rica.

32. In that of 1890 between Guatemala and Salvador.

33. In that of 1896 between Bolivia and Brazil.

34. In that of 1896 between Colombia and Venezuela.

35. In that of 1898 between Italy and Argentine Republic.

36. In that of 1881 between the Argentine Republic and Chile.

37. In that of 1890 between Peru and Bolivia.

38. Besides, in that of 1898, between the Argentine Republic and Italy.

In these treaties there does not exist, as we have said before, the exclusion of any question. It so appears in the special publication made on the occasion of the assembling of this Conference. There are indeed very few American treaties in which the questions of independence, safety, integrity, or honor have been excluded. In the treaty of 1890 between Costa Rica and Salvador, „the means of war for deciding questions, in which national honor is not directly interested, are considered barbarous and unjust." In the treaty between Mexico and Salvador in 1893, reference is made to the controversies between the two countries, which must be submitted to arbitration „provided that said questions be susceptible of being decided by that means."

In the treaty between Ecuador and Colombia, 1894, reference is made „to matters affecting the national sovereignty or which may in any manner be by their nature incompatible with arbitration," for which the mediation or good offices are only agreed upon. The treaty between Guatemala and Salvador of 1890 specifies the controversies for which arbitration shall be compulsory, whether for both contracting parties or simply for one or the other. It quotes the questions concerning diplomatic and consular privileges, boundaries, indemnifications, territory, rights of navigation, validity, interpretation and execution of treaties, and, in general, all other questions of whatever kind they may be. It only excepts such questions as, according to the private opinion of any of the nations interested in the dispute, may compromise their autonomy and independence. On the other hand, in other treaties between the same nations, and generally in

those executed in America, arbitration for all kinds of conflicts or disagreements is provided for. The treaty of Chili, Ecuador, and Bolivia, of 1867, may serve as a guide, for in its eleventh clause it says:

„The contracting Republics, complying with their social antecedents, with the present requirements, and with the principles which they intend to establish in America, declare that all questions which may arise between them on any account, whether it be through a misunderstanding of any of the articles of the present treaty, through supposed infractions of the same, upon the complaint of offenses, damages, or losses by one State against the other, or through boundary disputes, shall never have recourse to arms, and war shall never be the means between them to exercise justice, nor of binding each other to the fulfillment of the agreement. Thus, in the unfortunate case that good harmony which now exists between them should be interrupted, the following procedure shall be followed: The Republics in discord shall address to one another a memorandum explaining the demands of each, and the reasons on which they base them. If they should not agree by these means, they shall procure the good offices or mediation of one of the other nations. Should this measure also fail, they shall submit to the final decision of an arbitrator."

Article I of the treaty of 1890 between Salvador and Colombia provides:

„The Republic of Salvador and the United States of Colombia contract the perpetual obligation of submitting to arbitration the controversies and difficulties of any kind which may arise between the two nations whenever a solution thereof may not be obtained through diplomatic channels."

Thus it can be affirmed, without any risk of inaccuracy,

that the restriction of arbitration for reasons of independence, or honor, or of what is vaguely called superior interests, constitute on this continent a new reaction unknown for a long time in our international history. We do not think that such a reaction is worthy of being promoted by the American Conferences. It seems to us that it is the result of ideas and sentiments developed in feudal times, and that there is no reason why they should exist to-day. Honor, especially, does not now consist in the almost insane susceptibility of the Middle Ages. Honor in the modern State is based on living according to law, on contributing to civilization and the progress of humanity, in not imposing force, but in making use of it on behalf of justice, on respecting the treaties, when in possession of the material power to violate them.

The so-called „superior or vital interests" could certainly not be an object for precise definition. But it is to be believed that there is not for any nation any interest of greater importance than peace. These „interests" and the invocation of national honor were not a reason for limitation in the resolutions in the Conference at Washington, in which only the questions affecting independence were excluded from compulsory arbitration.

We understand sufficiently the amplitude without restraint of those American agreements, and we are glad to confirm the policy of our country in promoting or subscribing some of them, because arbitration, as Chevalier Descamps said at The Hague Conference, is not an inconsiderate abdication of sovereignty, but on the contrary a clear use thereof. We find no cause, no right, no interest, no matter how great and noble they may be considered, that should not come, if there be no other recourse, under the decision of a judge freely and

faithfully designated by the parties interested. Between this humanitarian and reasonable method and that of war, uncertain and terrible, we do not hesitate to entrust the former with what is considered most precious for the country.

Notwithstanding the foregoing, we do not want to place ourselves outside of what is practicable, and we are well aware that, in order to execute treaties, it is now indispensable to classify the questions susceptible of compulsory arbitration and those of optional arbitration.

This classification, according to European practices has been determined by the Hague Conference. It was there considered that the cases of international conflicts, though numerous and infinitely varied, could be resumed in two great categories: The demands between States for damages and injures; and the demands between States for causes of a different nature. With regard to conflicts of the first category, the acceptance of compulsory arbitration was considered possible and desirable. The conflicts of these kinds, the Russian project stated, referred to legal questions and do not concern either national honor of the states or vital interests. They were considered, at the same time, as susceptible of admitting compulsory arbitration:

1. Controversies relating to the treaties executed for the international protection of the great arteries of universal circulation, the postal, telegraphic, and railway conventions, the conventions agreed upon for the protection of submarine cables, the regulations destined to prevent collisions of vessels on the high seas, the conventions relative to navigation on international rivers and interoceanic canals.

2. Questions relating to treaties entered into for the international protection of moral and intellectual interests, whether of particular states or, in general, of all the international community.

3. The solution of the differences relating to the interpretation and application of treaties on international law, private, civil, and penal.

4. The differences and misunderstandings regarding the interpretation of boundary treaties, in so far as they have a technical and not a political character.

Although we are not entirely in accord with these ideas, they do serve us to establish that the necessity and possibility of specifying the conflicts, which are generally subject to compulsory arbitration, be recognized. In any other manner all treaties would become illusory, because among the generic exceptions relating to independence, national honor, and superior interests, there might be included, in moments in which nations are excited by passion, all other disputes, although entirely disconnected with the reasons enumerated.

The extent of compulsory arbitration in America must be greater than in Europe. In our continent, for reasons known by all, the difficulties which history has accumulated in the Old World do not exist. There is no system of international balance of power, nor has there elapsed sufficient time for our nationalities to form strong sentiments of exigencies, or ambitions, mutually incompatible. The political history of Europe, with its chain of wars of predominance, colonization, mutual territorial dismemberments, caused by the great density of the population, and other causes, has established deeply rooted interests, which for a long time to come will be considered as intimately connected with the very life of the states. Nothing of this kind occurs in America. Our American Republics occupy a territory which is three times greater than the area of all Europe with a small population of only 120,000,000 inhabitants.

We live practically, if we speak in general, in a desert, and our fiscal resources, naturally limited, do not lead us toward struggles for predominance, which are always the result of the great development of population and of public wealth. Our international boundaries rest upon the principle of the *uti possidetis* of 1810, incorporated in American law, and it is only necessary in many cases to arrive at an understanding regarding the just application of this principle and to effectively designate the dividing lines in accordance with the same.

This means, that in matters of boundaries, in America, really there exist no political questions. Controversies in this respect are of a technical character, and there is not one which may not be reduced to a rule of law. This is the reason why the nations of America have at all times endeavored to submit their disputes over boundaries to mixed commissions or to arbitration. In this particular many treaties of arbitration may be cited: Between Ecuador and Peru, between Peru and Brazil, between Brazil and the Argentine Republic, between Brazil and Paraguay, between the Argentine Republic and Bolivia, between the Argentine Republic and Chili, and between Bolivia and Peru. The same may be said of the Central American Republics.

It appears, for that reason, it can not be doubted that all the boundary questions of America are susceptible of compulsory arbitration and should be included in the permanent treaty. These questions, perhaps, are those which principally, from time to time, have originated serious disagreements, and on some occasions have caused fratricidal struggles. They have, besides, commenced to create unrest and animosities of such magnitude that the day does not appear distant in which an armed peace will be established

in our territories, to the detriment of the evolution of our countries.

In the treaty of The Hague it is established that in all questions of interpretation or application of international conventions, arbitration is to be the most efficacious and at the same time the most equitable means of deciding conflicts The declaration of the nations assembled at The Hague is the fruit of a very extensive practice in Europe. In 1872 Mancini presented in the Italian Parliament a motion intended to recommend to the Minister of Foreign Relations the introduction into the treaties of a clause which would make the decision of all difficulties arising from the interpretation or execution of the treaties the subject of arbitration. This motion was the reason for which the Italian Government stipulated that compulsory clause in all its treaties, and that it was generally accepted in Europe. In European treaties this clause is found in matters relating to commerce and navigation, international postal service, consular affairs, and even relating to the definition of boundaries.

On this continent the use of the compulsory clause has even been more extensive. We can cite, by way of example, the following treaties;

1. The treaty of April 26, 1823, between Chili and Peru, states as follows: „Although it has been endeavored to express the articles of this treaty in clear and precise terms nevertheless if, contrary to what may be expected, any doubt should arise, the contracting parties shall procure to decide it amicably, and, as a last resort, shall submit to the arbitrator mentioned."

2. The treaty of September 22, 1829, between Colombia and Peru, stipulates: „That in case of doubt over the proper interpretation of any of the articles of the treaty, both con-

tracting parties shall submit to the decision of a friendly government."

3. The treaty of November 8, 1831, between Bolivia and Peru, applies the compulsory clause, not to the interpretation, but to the observance of the compact. The treaty says: „If either of the contracting parties should violate one or some of the stipulations, they shall apply to the power which guarantees them, so that it may declare which one of them has suffered the injury."

4. The treaty of April 9, 1857, between New Granada and Portugal, also contains a compulsory clause with reference to the violations or infractions of any one, or some, of the articles stipulated, which shall be submitted to arbitral decision.

Analogous stipulations, relative to the misunderstandings regarding the interpretation of the clauses, as well as the disputes over the compliance with obligations, are to be found:

5. In the treaty of March 8, 1848, between New Granada and Peru.

6. In the treaty of August 6, 1874, between Chile and Bolivia.

7. In the treaty of April 8, 1876, between Italy and Uruguay.

8. In the treaty of May 8, 1876, between Salvador and Guatemala.

9. In the treaty of July 9, 1885, between Mexico and Sweden and Norway.

10. In the treaty of September 12, 1885, between Guatemala, Salvador and Honduras.

11. In the treaty of May 22, 1888, between Ecuador and Spain.

12. In the treaty of July 10, 1888, between Mexico and Ecuador.

13. In the treaty of November 27, 1888, between Mexico and Great Britain.

14. In the treaty of April 28, 1894, between Colombia and Spain.

15. In the treaty of April 23, 1894, between Ecuador and Colombia

16. In the treaty of February 17, 1872, between the Central American Republics.

17. In the treaty of June 18, 1898, between Peru and Spain.

This treaty, the same as the former ones, contains the compulsory clause in a general way, that is, that, according to it, difficulties originated or which may originate from existing treaties, and even from those which may be concluded in future, shall be submitted to arbitration.

In the European practice, the compulsory clause refers principally to the execution or interpretation of treaties or conventions which have no political character, and above all, to the treaties known by the name of universal unions. It was observed for this reason, in the Conference of The Hague, that the first attempt to introduce compulsory arbitration into international practice was made precisely in a treaty of a universal character, to wit, the one relating to the postal union of 1874.

In America, we have, strictly speaking, no treaties of a political character, and it would be difficult to cite an example. All our treaties refer to boundary disputes, to questions of river navigation, to occupation of territories, to diplomatic or consular privileges, and generally to affairs of a juridical nature. In all these cases, for the same reason, compulsory arbitration should serve as a guaranty, secured beforehand, against the exaltation of popular passions and the weakness of governments.

A treaty of arbitration, of an advanced character, should not enumerate the cases in which it is compulsory to submit to the decision of arbitration, because in such case, all the cases not enumerated would remain excluded from the obligation of arbitration. Thus, arbitration, would constitute the exception, and not the rule. On the contrary, the cases excluded from arbitration are those that should be specified. For this reason, whenever it is a question of concluding a compact of compulsory arbitration, restricted for reasons of independence or national honor, the proper thing to do is to specify the conflicts, in which one or the other of these reasons may be involved, and limiting such exceptions to these cases, which presents the advantage of converting compulsory arbitration into a principle, the generality of which is only limited by those cases, in which the majority of the countries think it necessary to have absolute liberty of judgment and of action.

From the arguments stated, it may be deduced that the traditional policy of Peru, during all the epochs of its independent existence, and with all countries regardless of their relative power, has been in favor of compulsory arbitration, in as ample a form as the other contracting contries were willing to admit; that this policy is in accord with the real and permanent interests of the republics of America, that if restrictions are to be admitted in this class of treaties, they should be specified, leaving in force the obligation to resort to arbitration as a general rule, and that in any case, controversies relating to boundaries and the validity, interpretation of and compliance with international treaties, should be decided by this pacific means.

The delegation of Peru, however, having been compelled to make concessions in many respects, in order to be in

harmony with the majority of the delegations of the Republics represented in this Conference, the treaty of compulsory arbitration, signed by ten delegations, signifies for the undersigned nothing more than a compromise."

After prolonged negotiations it was finally agreed that all the Delegations should sign the Protocol of adhesion to the Convention of the Hague and that the advocates of obligatory arbitration sign among themselves a Treaty binding their respective Governments to submit to the Permanent Court at the Hague all questions arising or in existence which did not effect their independence or national honor. All the nations represented, with the exception of Brazil, whose Delegate died during the Conference and Venezuela which withdrew before the end, accepted on January 15th 1902, the following Protocol of adhesion:

„Whereas: The Delegates to the International Conference of the American States, believing that public sentiment in the Republics represented by them is constantly growing in the direction of heartily favoring the widest application of the principles of arbitration; that the American Rupublics controlled alike by the principles and responsibilities of popular government and bound together by increasing mutual interests can, by their own actions, maintain peace in the Continent and that permanent peace between them will be the forerunner and harbinger of their national development and of the happiness and commercial greatness of their peoples;

They have, therefore, agreed upon the following.

Project.

Article 1st. The American Republics, represented at the International Conference of American States in Mexico, which have not subscribed to the three Conventions signed at The Hague on the 29th. of July, 1899, hereby recognize

as a part of Public International American Law the principles set forth therein.

Article 2nd. With respect to the Conventions which are of an open character, the adherence thereto will be communicated to the Government of Holland through diplomatic channels by the respective Governments, upon the ratification thereof.

Article 3rd. The wide general convenience being so clearly apparent that would be secured by confiding the solution of differences to be submitted to arbitration to the jurisdiction of a tribunal of so high a character as that of the Arbitration Court at The Hague, and, also, that the American Nations, not now signatory to the Convention creating that beneficent institution, can become adherents thereto by virtue of an accepted and recognized right; and further, taking into consideration the offer of the Government of the United States of America and the United States of Mexico, the Conference hereby confers upon said Governments the authority to negotiate with the other signatory Powers to the Convention for the Peaceful Adjustment of International Differences, for the adherence thereto of the American Nations so requesting and not now signatory to the said Convention.

A step looking to a further possible progress in the direction of compulsory arbitration was made in this fourth article:

Art. 4th. In order that the widest and most unrestricted application of the principle of just arbitration may be satisfactorily and definitely brought about at the earliest possible day, and, to the end that the most advanced and mutually advantageous form in which the said principle can be expressed in a Convention to be signed between the

American Republics may be fully ascertained, the President of Mexico is hereby most respectfully requested to ascertain by careful investigation the views of the different Governments represented in the Conference regarding the most advanced form in which a General Arbitration Convention could be drawn that would meet with the approval and secure the final ratification of all the countries in this Conference, and, after the conclusion of this inquiry, to prepare a plan for such a General Convention as would apparently meet the wishes of all the Republics; and, if possible, arrange for a series of protocols to carry the plan into execution: or, if this should be found to be impracticable, then to present the correspondence with a report to the next Conference."

On the 17 of January 1902 a treaty of compulsory arbitration signed by the Delegates of the Argentine Republic, Bolivia, the Dominican Republic, Salvador, Guatemala, Mexico, Paraguay, Peru, Uruguay and Venezuela, was submitted to the Conference. It had been signed on the 27th of December 1901. The Venezuelan Government withdrew its Delegates from the Conference on January 14th 1902 making the withdrawal retroactive to and from December 31st 1901. The provisions of the Convention are as follows:

„Article 1st. The High Contracting Parties obligate themselves to submit to the decision of arbitrators all controversies that exist, or may arise, among them and which diplomacy cannot settle, provided that in the exclusive judgment of any of the interested nations said controversies do not affect either the independence or the national honor.

Article 2nd. Independence or national honor shall not be considered as involved in controversies with regard to diplomatic privileges, boundaries, rights of navigation, and validity, construction and enforcement of treaties.

Article 3rd. By virtue of the power established in Article 26th of the Convention for the peaceful adjustment of international differences, signed at The Hague on July 29th 1899, the High Contracting Parties agree to submit to the decision of the Permanent Court of Arbitration, created by such Convention, all the controversies referred to in the present Treaty, unless either of the parties prefers the establishment of a special tribunal.

In the event that the High Contracting Parties should submit to the jurisdiction of the Permanent Court of The Hague, they accept the precepts of said Convention, both with respect to the organization of the Tribunal as well as to its procedure."

Articles 4th to 19th inclusive, as to procedure, were similar to those of the Hague Convention; the remaining were as follows:

„Article 26. The present Treaty does not abrogate any previous existing ones, between two or more of the Contracting Parties, in so far as they give greater extension to compulsory Arbitration. Neither does it alter the stipulations regarding Arbitration, relating to specific questions which have already arisen, nor the course of arbitration proceedings which may be pending by reason of the same.

Article 21st. Without the necessity of exchanging ratifications, this Treaty shall take effect so soon as three States, at least, of those signing it, express their approval to the Government of the United States of Mexico, which shall communicate it to the other Governments.

Article 22nd. The nations which do not sign the present Treaty, may adhere to it at any time. If any of the signatory nations should desire to free itself from its obligations, it shall denounce the Treaty; but such denouncement shall not produce any effect except with respect to the nation which may denounce it, and only one year after the notification of the same has been made.

Whenever the denouncing nation shall have any arbitration negotiations pending at the expiration of the year, the denouncement shall not have any effect with reference to the case not yet decided."

The 4th theme of the Programme provided for the study of an International Court of Claims. As to this subject President Roosevelt had instructed the American Delegates in this form:

4. *International court of claims.* It has been thought that an organized tribunal for the adjustment of indemnity claims arising between the American Republics may not be impracticable and may constitute a distinct advance in the administration of justice by serving to adjust many vexatious differences of this nature which might not readily yield to diplomatic treatment. The expression „court of claims," however, while convenient, is objectionable, partly because certain domestic courts bear that title, and partly because the name, as applied internationally, may easily give rise to misapprehension. A better designation, perhaps, would be a „tribunal of international equity," its precise purpose being to secure equity for those who are believed to have suffered injustice in a foreign country for which there is no existing judicial remedy.

The Government of the United States is favorable in principle to the establishment of such a tribunal for the

American Republics, if it is found practicable, but the form in which it should be constituted presents a serious difficulty. It is desirable, if possible, to avoid the well-known evils of mixed commissions, and it would be a great convenience to have a well-conceived permanent tribunal to which questions of indemnity might be referred without the delay of forming a special board of arbitration. The general principles already named under the head of arbitration would also have application here. The constitution of The Hague Tribunal may suggest a general plan of organization, particularly as regards its representative idea, each constituent power furnishing one or more members, with provision constituting a particular bench of judges ad once, composed of one, three, five or seven persons, according to the importance of each particular case. The Government of the United States has no special plan to offer, however, believing it to be preferable that proposals and projects upon this subject should come from the other American States. The success of such a tribunal would depend largely upon the personnel of the court as actually constituted and the public acceptance of its earliest decisions. Opposition would, no doubt, be diminished if the plan presented should be of a tentative character, leaving details to subsequent evolution, as experience might justify. In case a general convention should be formulated by the Conference, it would, add to the probability of its general ratification if the experiment should be for a limited time and should embody nothing compulsory. Every successful effort to accomplish its purpose would then strengthen its support and gradually commend it to public confidence."

Owing to the difficulties of creating the Tribunal a project of a Treaty covering the arbitration of pecuniary claims

was submitted to the Conference, signed by the Delegates of Salvador, Guatemala, United States of America, Ecuador, Hayti, Chili and Mexico, Senores Reyes, Lazo-Arriaga, Buchanan, Delegate to the Second Hague Peace Conference, Carbo, J. N. Leger, Delegate to the Second Hague Peace Conference, Augusto Matte, Delegate to the Second Hague Peace Conference, and F. de la Barra, Delegate to the Second Hague Peace Conference. This treaty was signed by every country represented at Mexico and reads as follows:

„Article 1. The High Contracting Parties agree to submit to arbitration all claims for pecuniary loss or damage which may be presented by their respective citizens, and which cannot be amicably adjusted through diplomatic channels and when said claims are of sufficient importance to warrant the expenses of arbitration.

Article 2. By virtue of the faculty recognized by Article 26 of the Convention of the Hague for the pacific settlement of international disputes, the High Contracting Parties agree to submit to the decision of the permanent Court of Arbitration established by said Convention, all controversies which are the subject matter of the present Treaty, unless both Parties should prefer that a special jurisdiction be organized, according to Article 21 of the Convention referred to.

If a case is submitted to the Permanent Court of The Hague, the High Contracting Parties accept the provisions of the said Convention, in so far as they relate to the organization of the Arbitral Tribunal, and with regard to the procedure to be followed, and to the obligation to comply with the sentence.

Article 3. The present Treaty shall not be obligatory except upon those States which have subscribed to the Convention for the pacific settlement of international disputes,

signed at The Hague, July 29, 1899, and upon those which ratify the Protocol unanimously adopted by the Republics represented in the Second International Conference of American States, for their adherence to the Conventions signed at The Hague, July 29, 1899,

Article 4. If, for any cause whatever, the Permanent Court of The Hague should not be opened to one or more of the High Contracting Parties, they obigate themselves to stipulate, in a special Treaty, the rules under which the Tribunal shall be established, as well as its form of procedure, which shall take cognizance of the questions referred to in article 1 of the present Treaty.

Article 5. This Treaty shall be binding on the States ratifying it, from the date on which five signatory governments have ratified the same, and shall be in force for five years. The ratification of this Treaty by the signatory States shall be transmitted to the Government of the United States of Mexico, which shall notify the other Governments of the ratifications it may receive."

The Second Pan-American Conference had thus taken a notable step forward in the settlement by arbitration of a serie of questions which, as the Minister of Foreign Affairs of Mexico, Señor Mariscal, remarked at the closing of the Conference: „At least in America and in cases where powerful nations are involved, are without doubt the most frequent source of international controversies." The importance of this achievement „he added" can no be doubted. When the convention once comes into force, all these complaints and claims which oftenest inflame the minds of statesmen and embitter international relations will be settled peacefully in the manner dictated by equity and the highest considerations of expediency."

Señor de la Barra, Delegate from Mexico, on the 22nd of June, when presenting the text for the study of the Second Peace Conference, said rightly that it had „Realized one of the noble aspirations expressed by the Russian Delegation in its explanatory note of article 10 of the project of an arbitration Convention submitted to the Conference in 1899."

CHAPTER IV.

1906.

THIRD PAN-AMERICAN CONFERENCE. RIO JANEIRO.

The Third Pan-American Conference of 1906 was called, pursuant to a resolution passed on the 29th of January 1902 in Mexico which provided that it was to meet within five years, in the place which the Secretary of State of the United States of America and the diplomatic representatives accredited by the American Republics in Washington should choose for the purpose, and in accordance with what, at the meeting of the said representatives should be resolved regarding the programme and other necessary details, for all of which they were expressly authorized, and if due to any circumstances it would have not been possible for the Third Conference to assemble within five years, the Secretary of State of the United States of America and the diplomatic representatives accredited in Washington were to designate another date for its reunion.

On the 1st of November 1905, the Honorable Elihu Root, Secretary of State of the United States called the attention of the Governing Board of the International Bureau of the American Republics at Washington, consisting of the diplomatic representatives of America to the advisability of preparing for a Third Conference. To draw the programme, a Committee was appointed composed of the Secretary of State of the United States, President ex-officio, the Ambassadors of Brazil and Mexico, and the Ministers of Chile,

Costa Rica, Cuba and the Argentine Republic, and a request was addressed to the different Governments asking for their views as to the matters which should form the subjects of the programme. By the twenty third of March 1906, answers had been received from the Governments. The following were the opinions as to arbitration:

Uruguay desired „that arbitration should figure in the first place in the programme."

Bolivia wanted „an explicit declaration as to the advantage of submitting to arbitration all questions which may arise or exist between the American republics."

The United States of America declared that it would be pleased to see inserted in the Programme „a resolution affirming the adherence of the American Republics to the principle of arbitration for the settlement of disputes arising between them, and expressing the hopes of the republics taking part in the Conference that the International Conference to be convened at The Hague will agree upon a general arbitration convention that can be approved and put in operation by every country".

Panama wished also that arbitration be included in the programme.

Peru favored it without restriction or limitations and so said it, in these terms:

„The subject of arbitration, without restrictions or limitations, of any kind, to be discussed with absolute freedom at the Third Conference, just as was the case in those of Washington and Mexico.

„Among all of these subjects, my Government is interested the most in arbitration, because peace among the several republics, a paramount necessity and an indispensable condition of welfare, is dependent upon the exercise of arbitration in America.

This may be ascertained by the fact that in all previous American Congresses especially those at Washington and Mexico the study of arbitration has been given paramount inportance. It is only by means of the adoption of arbitration that mutual respect, concord and the union to which all American Republics aspire, may be consolidated, which will enable them, under shelter of these benefits, to devote their energies towards the attainment of definite stability and greatness. My Government is hopeful that the Programme of the Third International Pan-American Conference will confirm the lofty purposes of the Congresses at Washington and Mexico, and shall bring forth the consideration of arbitration at the Congress at Rio, it being the matter that interests public opinion the most, in this continent, as is also the only solid basis upon which may rest all such agreements and treaties that have as a purpose to strengthen the commercial relations between the American Republics."

The Argentine Republic favored obligatory arbitration stating that: „Above all, faithful to the traditions of its foreign policy, it would see with satisfation obligatory arbitration included in the programme of the Third Conference, in the hope that it will be made the supreme rule of American public law. It, thus, believes that it honors, also, the worthy tradition of the Congresses of Montevideo, Washington and Mexico. It cannot be conceived that common rules on private law can be established among the nations of the continent, - above all, juridical relations and principles as to given points of public law, - and that there be left to chance, the disputes which might have their origin in the interpretation and application of these rules and principles and, generally, the multitude of questions as to their political juridical relations. If the countries of America have not endeavored to approve the

treaties and conventions of the previous Congresses, it is possibly due to the fact that there has been no fundamental guarantee of success, through the lack of faith in the results. It cannot be conceived, either, that a practice called to establish among nations the empire of justice and right and to destroy illfeelings and to suppress enmities, should have the anomalous virtue of fomenting them, and that what essentially should unite, should thus divide. If the countries which signed the treaty of obligatory arbitration have not sanctioned it, in their respective Congresses, it is undoubtedly because they have not judged it practicable to enter into an engagement of that kind, without the unanimous consent of all the nations of America. That in these nations the general sentiment is prepared to support the principle of arbitration, in its most advanced form, is shown by the very eloquent fact that many of them are partially bound among themselves, and with European Nations, by Treaties of obligatory arbitration."

Chile on the contrary thought that: „The questions referring to arbitration which have so divided America before had been eliminated in Mexico and that two solutions which satisfied the most oppossed aspirations had been adopted there." „Moreover there had been in the Second Pan-American Conference a unanimous agreement to request the governments of the United States and of Mexico to take the necessary steps so that all the American Republics should be admitted to the Hague Peace Tribunal, and to-day all of them had been invited to take part in the new proposed Conference in order to enlarge the results of that universal reunion."

The Chilian Minister, Señor Walker Martinez, added: „In the city of Mexico there was concluded also on the 29th of December, 1902, a treaty of obligatory arbitration,

without limitation or restrictions, for the difficulties which may arise or exist between the signatory powers. It was signed outside of the Conference by the representatives of nine Nations and it contains a clause by which future adhesions can be made. What need is there then of provoking in the Third Conference disagreeable discussions, which were avoided in the Second by this simple means? In the same way that the advocates of arbitration without restrictions obtained the first nine adhesions they might look for others without the need of taking up the time of the Conference of Rio Janeiro, that might be devoted to the study of matters of more general interest and in which opinions were more in accord. This will be much more justifiable when it is considered that of the nations whose representatives signed the said treaty of obligatory arbitration, not all of them have given to it their constitutional sanction, which seems to show that Congress and public opinion in some of the signatory powers still resist a formula of arbitration which has not yet opened its way in the world."

Ecuador adhered to the views expressed by Chile.

The Government of Mexico thought: „that one of the first objects of the next Conference should be to proclaim, once more, arbitration as the best means to settle international conflicts. Mexico nevertheless, would not wish that a new project of obligatory arbitration be discussed, which, no matter what were its provisions, could not count with the unanimous approval of all the nations of America; because it trusts that greater benefits are to be obtained from the sole efficiency of principles, proclaimed by all, and by the constant submission to arbitration of all those questions which it is possible to-day to settle by that means, than by fruitless attempts to attain ends which, no matter how

noble, and how much they signify a progress in the sphere of principles, are not called to yield practical results."

It was finally decided to place arbitration on the programme under head II in this form:

„A resolution affirming the adherence of the American Republics to the principle of arbitration for the settlement of disputes arising between them, and expressing the hopes of the Republics taking part in the conference, that the international conference to be convened at The Hague will agree upon a general arbitration convention that can be approved and put in operation by every country."

The Governing Board of the International Bureau of the American Republic chose Rio Janeiro as the seat of the Third International Pan-American Conference. It lasted from the 23rd of July to the 26th of August 1906 and was attended by the United States of America, Argentine Republic, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador and Uruguay.

Hayti and Venezuela did not attend.

In opening the Conference the Baron de Rio Branco said, among other things:

„Our hopes are that from this Third Conference may result, confirmed, and defined by practical acts and measures of common interest, the auspicious assurance that the times of true international fraternity are not far distant. It is already a pledge, therefore, the general trend of thought trying to conciliate opposed or apparently contrary interests and then to place them at the service of the ideal of peaceful progress. This assurance manifests itself, already, in the intelligence wherewith it is endeavored to promote more intimate political relations, to avoid conflicts, and to regulate the

amicable solution of international divergencies, harmonizing the laws of commerce between nations, facilitating, simplifying, and strengthening their mutal relations.

In former times the so-called peace congress assembled to establish the consequences of wars, and the victors dictated their will to the vanquished in the name of future friendship, based on the respect due to the strongest power. The congresses of to-day are almost always convoked in times of peace, without any constraint, with clear foresight in order to regulate the pacific activity of nations; and therein the right of the weak is considered as fully as that of the strong. They give body, form, and authority to international law, happily more and more respected in our days, which constitutes a great advance in the history of civilization. They have for origin the consensus of opinion produced by the greater diffusion of intellectual culture, by the progressive importance of economical interests, and by the assiduous propaganda of sentiments of humanity and of concord. Instead of the vexatious and cruel negotiations, in which one party asks for justice or generosity and the other imposes the law of his sole will, we have now serene and amicable discussions in which each party sets fort simply and clearly his way of looking at practical questions and questions of general convenience. Here the concessions represent conquests of reason, amicable compromises or compensations, counseled by reciprocal interests. In them there are only friendly expressions, significative of true courtesy used by equals. And thus, far from diminishing, national dignity is increased at these diplomatic encounters, in which there are neither vanquishers nor vanquished.

These considerations are certainly familiar to the minds of the illustrious members of the International Conference;

they are familiar to and tacitly understood by all of us that are gathered here; but they may not be dispensed with as an express declaration of the real and sincere purpose with which we have come together.

The idea that the grouping of men is only made against other men is still a disagreeable survival of the past, when pessimism constituted the only lesson taught by history. The meeting of this Conference may, perhaps, give use to the suspicion that we are forming an international league against interests not represented here. It is therefore necessary to affirm that, formally or implicitly, all interests will be respected by us; that in the discussion of political and commercial subjects submitted for consideration to the Conference it is not our intention to work against anybody, and that our sole aim is to bring about a closer union among American nations, to provide for their well-being and rapid progress; and the accomplishment of these objects can only be of advantage to Europe and to the rest of the world.

As young nations still, we should not forget what we owe to those who have furnished the capital with which we entered into the world of competition. The very immensity of our territories, in a great part unpopulated and unexplored, and the certainty that we have ample resources for a population ten or twenty times larger on this continent, would suggest to us the advisability of strengthening more and more our friendly relations, and of trying to develop the commercial interests which we have in common with an inexhaustible world of men and prodigious fount of fertile energies like Europe. From Europe we come; Europe has been our teacher, from her we receive continually support and example, the light of science and art, the commodities of her industry, and the most profitable lessons

of progress. What, in exchange for this moral and material gift, we can give to her, by our growth and prosperity, will certainly constitute a more important field for the employment of her commercial and industrial activity."

Ex-President Esquivel of Costa Rica, in responding to the address of welcome, in the name of the Delegates, affirmed the declarations of Baron de Rio Branco as to the attitude of America with respect to Europe, saying:

„We have heard with feelings of satisfaction the words of His Excellency the Minister of Foreign Affairs, and we wish also to emit the opinion that the advantages which America has to offer to mercantile enterprises are of inestimable value to us because of the powerful elements of progress which we obtain in exchange. These advantages we must preserve, maintaining our ports open to trade with no other limitations than may be considered advisable by each Republic in its own interests."

The address of Dr. Joaquim Nabuco, Ambassador of Brazil in Washington, as permanent President of the Conference was a worthy production of that enlightened diplomat. He spoke most eloquently as follows.

The Honorable Minister of Foreign Affairs has already told you how Brazil looks upon this periodic reunion of the American States.

To-day, when we have the honor of welcoming them, our policy may be considered as the policy of hospitality.

Our purpose and our ambition are to carry out this policy in its highest sense—that is, to seek to make all of you our friends and friends among yourselves.

The aim of the American conferences was intended to be the creation of an American opinion, of an American public spirit, and it is very difficult to know how they should work to attain this end.

There are two ways of conceiving the work which these conferences can carry out.

One way is to consider them as great parliaments, open to public opinion, accounting orators according to the echo that the propagandist speeches pronounced by them may arouse in the spirit of the country where they have met and in that of their own countries.

The other way of judging them, and that is my way, is to believe that these conferences shall never aim at forcing the opinion of a single one of the nations taking part in them; that in no case shall they intervene collectively in the affairs or interests that the various nations may wish to reserve for their own exclusive deliberation. To us it seems that the great object of these conferences should be to express collectively what is already understood to be unanimous, to unite, in the interval between one and another, what may have already completely ripened in the opinion of the continent, and to impart to it the power resulting from an accord amongst all American nations.

This method may appear slow, but I believe it to be the only efficacious one, the only way of not killing at its inception an institution which is worthy of enduring troughout the centuries.

It is not a small undertaking, neither is it a slight effort, to unify the civilization of the whole American continent. This will constitute one day their glory, but it is a work which requires much prudence; on the part of and amongst the nations, which shall successively have the honor of extending their hospitality to the conferences, there should exist only the desire to avoid anything that might draw us apart, to promote everything that may tend to bring us together.

It was through the force of American destiny, which remodels and recasts all the forms of action at its command, it was by an effort of will and tenacity that the difficulties encountered at the First and Second Conferences were powerless to shake the resolution of the various states of this continent to continue to meet as before.

For my part, I feel certain that there is no nation that will fail to profit by this point of view, which seems to me to be the only one capable of safeguarding the future of our reunions.

Besides the direct and immediate effect which is aimed at, there is the much more general and indirect effect which results from our coming together, from our mutual acquaintance, from the spirit of concord and of union which our collaboration can not fail to produce, from the desire to show to observers that we have no purpose whatever which might be looked upon with suspicion or distrust by the rest of the world."

In the Committee charged with the study of Arbitration the same tendencies as those of the previous Congresses were shown and an attempt was made by the Delegates of Peru and Bolivia to obtain a declaration from the Conference expressing that compulsory arbitration was the goal that must be finally reached before any international arbitration agreement could be considered to be of specific value. This was objected to by the Delegations who held that such a resolution would fix, beforehand, the character of the Convention to be considered at the coming Conference at the Hague.

The United States Delegates were under the following instructions, given them by Secretary Root, on June 18th 1906:

„The treatment of this subject by the Conference should

be materially affected by the new and more satisfactory relation of the American States generally to the consideration of arbitration as a world question by the Peace Conference at The Hague, soon to take place. The First Peace Conference, held at The Hague in 1899, included but two American States, the United States of America and the United States of Mexico; and the general arbitration convention concluded at that Conference contained no provision for the adherence of powers not represented except upon conditions to be determined by a subsequent agreement among the contracting powers.

The Second American Conference at Mexico adopted a resolution January 15, 1902, authorizing the Governments of the United States and Mexico to negotiate with the other signatory powers for the adherence of the American States to the general arbitration convention, and the United States subsequently applied in behalf of several of the other American States for their admission to become signatories to the convention. The signatory powers, however, never came together in an agreement upon the contemplated conditions of adherence, and the requests preferred by the United States were refused.

On the 21st of October, 1904, the United States issued a proposal to the signatory powers of the First Hague Conference for a Second Conference and specified as one of the things to be done the adoption of a procedure by which States non-signatory to the original acts might become adhering parties. This proposal met with general acceptance, but the calling of the Conference was postponed, owing to the war between Russia and Japan. On the 13th of September, 1905, the further initiative in calling the Conference was taken by the Emperor of Russia, with the ready concur-

rence of the President, and the Emperor of Russia included in his invitation to the Second Conference all the American States.

As a part of the preliminary arrangements for the Second Hague Conference, it has been agreed that in order that all the States represented at the Second Conference may be upon the same footing in discussing modifications or extensions of the treaty of arbitration, the first business of the Second Conference shall be to authorize, by a preliminary protocol, the adherence of all the non-signatory States to the arbitration treaty of the First Conference. This understanding has been communicated by Russia to all the signatory States, and their assent to it is regarded as making the proposed action certain and leaving nothing further to be done but the formal action to be taken at the opening of the Second Hague Conference.

All of the American States are accordingly at liberty to become parties to the general arbitration treaty of The Hague and to take part in the consideration by the whole civilized world of the advances which may be made in the application of the principle of arbitration.

The Conference at Rio can probably render no more useful service to the cause of arbitration than by securing the general assent of the American States to the principles which should receive a new impetus and universal effect at The Hague."

The Committee, after considerable discussion, adopted the following unanimous report which was subsequently approved by the Conference:

„The pacific solution of international conflicts was fully discussed in previous conferences. This being so, the Conference of Rio de Janeiro should confine itself to confirming

the principle of arbitration which all of the American Republics have constantly upheld. This conclusion is further reenforced when the fact is taken into account that the arduous problem will be newly the object of special study in the coming Conference of The Hague, to which all of the American nations have been invited.

The subject is one that does not exclusively contemplate the interests of a determined group of sovereign States, and it is therefore logical, as well as practical, that the definite debate upon the subject should be left to an assembly of world-wide character with the object of reaching therein an agreement of arbitral justice which, by reason of the ample spirit of conciliation inspiring it, shall merit the adherence thereto of all nations.

Such is the view that has influenced the members of the committee on arbitration and given form to the draft of the resolution recommended to the Conference for its sanction.

Draft of Resolution.

„Whereas the American Republics have always upheld the principle of arbitration as a means of maintaining international peace; and

„Whereas they have been invited to the next Hague Conference, the Third International Conference of the American States assembled in Rio de Janeiro, resolves

„To ratify adherence to the principle of arbitration, and to the end that so high a purpose may be rendered practicable to recommend to the nations represented at this Conference that instructions be given their delegates to the Second Conference to be held at the Hague to endeavor to secure by said assembly of world-wide character the celebration of a general arbitration convention so effective and definite

that, meriting the approval of the civilized world, it shall be accepted and put in force by every nation".

This resolution was presented by the Brazilian Delegation to the Second Hague Conference on the 27th of June 1907.

The extension for a period of five years of the Treaty for the Arbitration of Pecuniary Claims was also included in the Programme under heading III thus:

„A resolution recommending to the different Republics the extension for the further period of five years of the „Treaty of Arbitration for Pecuniary Claims" agreed upon at the Mexican Conference between the different Republics."

The Delegates of the United States had been instructed thus:

„This is a matter special to the American States and it calls for special consideration. One of the results of the Mexican Conference was a treaty, signed by 17 of the States, agreeing to submit to arbitration all claims for pecuniary loss or damage which may be presented by the respective citizens and which can not be amicably adjusted through diplomatic channels. The treaty was to continue for five years. It has been ratified by only five powers, including the United States.

The treaty should be extended for another five years, and an urgent effort should be made to secure the adherence of the other powers. You can readily ascertain whether the failure of ratification by 12 out of the 17 powers who signed the treaty was due to some objectionable feature which can be remedied, or to fundamental objections, or to indifference.

This treaty is the very simplest and narrowest form of a general agreement to arbitrate. and so long as three-fourths of the American States have not reached this point of agreement, the discussion of any proposals for compulsory

arbitration of a wider scope would seem to be at least premature."

In the Committee which had this matter under consideration, a majority wished to add a section providing that arbitration should only take place after the legal resources afforded by the Courts of a signatory country had been exhausted. These Delegates held that the first article lent itself to the interpretation that the internal organization of a signatory state was to be ignored and an arbitral tribunal, that could not be avoided, was to be set up instead.

Mr. Buchanan held that no such fault had been detected by the eight states that had ratified the treaty out of the 18 signatory countries, and that it was better to bring up the question of interpretation of article 1 when some actual case had come up. (*)

A report was finally made to the Conference which was accepted by it unanimously, the text read as follows:

„It has been the pleasure of the committee on arbitration to consider the second topic of the programme concerning which it was to report, exchanging opinions regarding the advisability of ratifying and extending the treaty of arbitration sanctioned by the Mexican Conference regarding pecuniary claims.

This convention was signed by the Delegates of the nations represented at said Conference, but was ratified only by the United States of America, Mexico, Nicaragua, Guatemala, El Salvador, Honduras, Peru and Bolivia.

This partial ratification may, perhaps, have been due to the precise terms in which the first article provides for arbitral jurisdiction, this being possibly interpreted to mean

(*) Report of the Delegates of the United States to the Third International Conference of American States. Washington 1907, by Mr. W. I. Buchanan.

that the inherent internal rights and prerogatives of a state was in all cases to be substituted by an arbitral tribunal whose jurisdiction could not be avoided.

It is clear that such an interpretation is not well founded. If it be established that all claims for losses and damages brought against a State by the citizens of another must be submitted to arbitration, when they can not be adjusted through diplomatic channels, it is but reasonable to presume that these are cases in which diplomatic intervention is justified.

The internal sovereignty of a State, an essential condition of its existence as an independent international power, consists explicitly in the right it always preserves of regulating such juridical acts, as are consummated within its territory, by its laws, and of trying these by its tribunals, excepting in cases where, for special reasons (and to these international law devotes particular attention), they are converted into questions of an international character,

There is, therefore, no well-founded reason against ratifying and extending the treaty on arbitration of pecuniary claims sanctioned by the Conference of Mexico without any textual alteration whatsoever.

There is but to be suppressed the third article, for the reason that the condition therein prescribed has been met and to fix the exact date on which the said treaty will terminate, since, while it may not go into effect on the same date for all the high contracting parties, because the term runs from the date they respectively ratify it, it will conclude, nevertheless, on the same date for all.

The committee hopes that the ratification and extension provided for by the draft of convention proposed by it will be unanimously sanctioned by the Conference, for the reason that it tends to attain the high end of securing by judicial

means the decision of conflicts of an international character, thus avoiding, so far as may be possible, solution by force.

Draft of resolution.

The high contracting parties, animated by the desire to extend the term of duration of the Treaty on Pecuniary Claims, signed at Mexico, January thirtieth, nineteen hundred and two, and believing that, under present conditions, the reasons underlying the third article of said treaty have disappeared, have agreed upon the following:

„Sole article. The Treaty on Pecuniary Claims, signed at Mexico, January thirtieth, nineteen hundred and two, shall continue in force, with the exception of the third article, which is hereby abolished, until the thirty-first day of December, nineteen hundred and twelve, both for the nations which have already ratified it and for those which may hereafter ratify it."

The text of the treaty, as it had been already said, was submitted to the Second Hague Conference by the Mexican Delegation on the 22nd of June 1907.

Among the other subjects proposed, which were not included in the programme, was one by Peru as to the establishment of an International Pan-American Court of Claims, independent of the one at The Hague which would be the complement of the Treaty of Pecuniary Claims, and Instructions to Delegates of the Second Peace Conference, suggested by the Hon. Elihu Root, Secretary of State of the United States, in the following letter, dated March 22, 1906, addressed to the Committee on Programme:

„You will recall that the Conference in Mexico adopted a protocol of adherence to the Conventions of The Hague, and, in the third Article of that protocol conferred upon

the Governments of the United States of America and the United States of Mexico authority to negotiate with the other signatory Powers to the Convention for the Peaceful Adjustment of International Differences, for the adherence thereto of the American nations so requesting and not then signatory to the said Convention.

At different times since the Mexican Conference, the United States has endeavored to secure the admission of individual States of Central and South America as additional signatories to The Hague Convention, but without avail, for the reason that no express provision was made therefor in the Hague Convention.

In October, 1904, Mr. Hay, in taking the initiative on behalf of the United States for the calling of a Second Conference at The Hague, made one of the subjects of his letter to all the signatory Powers, a suggestion for the consideration and adoption of a procedure by which States non-signatory to the original acts of The Hague Conference might become adhering parties. This was further pressed upon the Powers by a note communicated to all of them in December, 1904. Accordingly when, in October, 1905, upon the close of the war between Japan and Russia, the President of the United States yielded to Russia the initiative in bringing a Second Hague Conference, Russia included all the South American States in the call for the Conference, and nearly all of them have accepted the invitation.

It is evident that by thus pressing for inclusion of all the American States in the general agreement of the nations at The Hague, we have all of us assumed a responsibility which we must be prepared to discharge when the next Conference is convened. It appears to me that it is very desirable that the way in which that responsibility shall be

discharged should be made the subject of consultation and discussion at the Rio Conference, so that the Delegates of the American States may attend The Hague Conference with well considered and matured instructions.

I have the honor therefore to propose to the Committee that there should be included in the programme for discusion at the Rio Conference a subject something as follows:

Instructions to Delegates to the forthcoming International Conference at The Hague.

Under this I would provide for discussing separately:

(a) Instructions relating to the duties of neutrals in time of war.

(b) Instructions relating to immunity of private property at sea in time of war.

(c) Instructions relating to measures for reducing the probability of war.

And under this head I believe that if the acceptance of the principle that contracts between a nation and an individual are not collectible by force concerning which subject His Excellency Dr. Drago, the distinguished Argentine Minister for Foreign Affairs, in 1902, addressed an able note to the Argentine Minister in Washington, (*) can be secured at

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(*) The following is the translation of the famous Note of Señor Drago Delegate to the Second Hague Peace Conference, given in the Foreign Relations of the United States for 1903. In the same volume is the Memorandum of the Secretary of State of the United States, the Honorable John Hay answering it which is herewith appended:

ARGENTINE REPUBLIC,

Ministry of Foreign Relations and Worship.

Buenos Aires, December 29, 1902.

Mr. Minister: I have received Your Exellency's telegram of the 20th instant concerning the events that have lately taken place between the Government of the Republic of Venezuela and the Governments of Great Britain and Germany. According to Your Excellency's information the origin of the disagreement is, in part, the damages suffered by subjects of the claimant

The Hague, a most important step will have been gained in the direction of narrowing the causes of war. For this reason I hope the Committee will deem it well to consider the inclusion of this subject with the others I have referred to".

As to the last suggestion the Argentine Republic supported it requesting „that a proposition be included in the programme, so as to serve as a basis for obtaining a vote of the Third Pan-American Conference, accepting the so called Drago Doctrine: the formula could be this: „The Third Pan-American Conference invites the International Congress which is to assemble in the City of The Hague, to express itself from a legal point as to the question of doctrine raised by the Argentine note of the 29th of December 1902, signed by the ex-Minister of Foreign Relations, Doctor Louis M. Drago, as to the compulsory collection of a public debt."

In the course of the discussion, at Washington, it was

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nations during the revolutions and wars that have recently occured within the borders of the Republic mentioned, and in part also the fact that certain payments on the external debt of the nation have not been met at the proper time.

Leaving out of consideration the first class of claims the adequate adjustment of which it would be necessary to consult the laws of the several countries, this Government has deemed it expedient to transmit to Your Excellency some considerations with reference to the forcible collection of the public debt suggested by the events that have taken place.

At the outset it is to be noted in this connection that the capitalist who lends his money to a foreign state always takes into account the resources of the country and the probality, greater or less, that the obligations contracted will be fulfilled without delay.

All Governments thus enjoy different credit according to their degree of civilization and culture and their conduct in business transactions; and these conditions are measured and weighed before making any loan, the terms being made more or less onerous in accordance with the precise data concerning them which bankers always have on record.

In the first place the lender knows that he is entering into a contract with a sovereign entity, and it is an inherent qualification of all sovereignty

evident that Brazil preferred not to have a vote taken in the Pan-American Conference as to the acceptance or advisability of the principle of the note quoted; Chili also did not support it; and the Representatives of Cuba and Costa Rica proposed that the Conference should study:

„The extent and limitations of the responsibilities of a nation in the different classes of pecuniary claims and admissible means for their collection."

This was not accepted and finally the following text became subject IV of the Program:

„A resolution recommending that the Second Peace Conference at The Hague be requested to consider whether and, if at all, to what extent, the use of force for the collection of public debts is admissible."

In the Conference, the Committee to which this subject devolved had great difficulty in coming to an unanimous agreement. The Delegates of Uruguay and Colombia were of the opinion that the question should not be submitted

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that no proceedings for the execution of a judgment may be instituted or carried out against it, since this manner of collection would compromise its very existence and cause the independence and freedom of action of the respective Government to disappear.

Among the fundamental principles of public international law which humanity has consecrated, one of the most precious is that which decrees that all states, whatever be the force at their disposal, are entities in law, perfectly equal one to another, and mutually entitled by virtue thereof to the same consideration and respect.

The acknowledgment of the debt, the payment of it in its entirety, can and must be made by the nation without diminution of its inherent rights as a sovereign entity, but the summary and immediate collection at a given moment, by means of force, would occasion nothing less than the ruin of the weakest nations, and the absorbtion of their Governments, together with all the functions inherent in them, by the mighty of the earth. The principles proclaimed on this continent of America are otherwise. „Contracts between a nation and private individuals are obligatory according to the conscience of the sovereign, and may not be the object of compelling force", said the illustrious Hamilton, „they confer no right of action contrary to the sovereign will".

to The Hague Conference. Peru, with other Delegations, suggested that the Conference should resolve the question in definite terms, while others wanted a vague form adopted.

The Delegation of Uruguay made the following proposition:

„The Committee believes that isolated cases which have arisen in complicated circumstances are not sufficient to consider as established among nations compulsory collection of public debts and that to express a doubt as to this, might diminish the sovereignty of countries of America. For this reason it is of the opinion that the Conference should not adopt any resolution as to the matter."

The United States acted in conformity to the following instuctions:

„It has long been the established policy of the United States not to use its armed forces for the collection of ordinary contract debts due to its citizens by other governments. We have not considered the use of force for such a purpose

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The United States has gone very far in this direction. The eleventh amendment to its Constitution provided in effect, with the unanimous assent of the people, that the judicial power of the nation should not be extended to any suit in law or equity prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State. The Argentine Government has made its provinces indictable, and has even adopted the principle that the nation itself may be brought to trial before the Supreme Court on contracts which it enters into with individuals.

What has not been established, what could in no wise be admitted, is that, once the amount for which it may be indebted has been determined by legal judgment, it should be deprived of the right to choose the manner and the time of payment, in which it has as much interest as the creditor himself, or more, since its credit and its national honor are involved therein.

This is in no wise a defense for bad faith, disorder, and deliberate and voluntary insolvency. It is intended merely to preserve the dignity of the public international entity which may not thus be dragged into war with detriment to those high ends which determine the existence and liberty of nations.

The fact that collection can not be accomplished by means of violence does not, on the other hand, render valueless the acknowledgment of the public debt, the definite obligation of paying it.

consistent with that respect for the independent sovereignty of other members of the family of nations which is the most important principle of international law and the chief protection of weak nations against the oppression of the strong. It seems to us that the practice is injurious in its general effect upon the relations of nations and upon the welfare of weak and disordered States, whose development ought to be encouraged in the interest of civilization; that it offers frequent temptation to bullying and oppression and to unnecessary and unjustifiable warfare. We regret that other powers, whose opinions and sense of justice we esteem highly, have at times taken a different view and have permitted themselves, though we believe with reluctance, to collect such debts by force. It is doubtless true that the non-payment of public debts may be accompanied by such circumstances of fraud and wrong doing or violation of treaties as to justify the use of force. This Government would be glad to see an international consideration of the

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The State continues to exist in its capacity as such, and sooner or later the gloomy situations are cleared up, resources increase, common aspirations of equity and justice prevail, and the most neglected promises are kept.

The decision, then, which declares the obligation to pay a debt, whether it be given by the tribunals of the country or by those of international arbitration, which manifest the abiding zeal for justice as the basis of the political relations of nations, constitutes an indisputable title which can not be compared to the uncertain right of one whose claims are not recognized and who sees himself driven to appeal to force in order that they may be satisfied.

As these are the sentiments of justice, loyalty, and honor which animate the Argentine people and have always inspired its policy, Your Excellency will understand that it has felt alarmed at the knowledge that the failure of Venezuela to meet the payments of its public debt is given as one of the determining causes of the capture of its fleet, the bombardment of one of its ports, and the establishment of a rigorous blockade along its shores. If such proceedings were to be definitely adopted they would establish a precedent dangerous to the security and the peace of the nations of this part of America.

The collection of loans by military means implies territorial occupation to make them effective, and territorial occupation signifies the suppression or subordination of the governments of the countries on which it is imposed.

subject which shall discriminate between such cases and the simple non-performance of a contract with a private person, and a resolution in favor of reliance upon peaceful means in cases of the latter class. You will find strong support for this view in an excellent letter written on the 29th of December, 1902, by Mr. Drago, the Argentine Minister of Foreign Relations, to the Argentine Minister in Washington, and printed in the volume of Foreign Relations of the United States for 1903, pag. 1.

It is not felt, however, that the Conference at Rio should undertake to make such a discrimination or to resolve upon, such a rule. Most of the American countries are still debtor nations, while the countries of Europe are the creditors. If the Rio Conference, therefore, were to take such action it would have the apperance of a meeting of debtors resolving how their creditors should act, and this would not inspire respect. The true course is indicated by the terms of the programme, which propose to request the Second Hague

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Such a situation seems obviously at variance with the principles many times proclaimed by the nations of America, and particularly with the Monroe Doctrine, sustained and defended with so much zeal on all occasions by the United States, a doctrine to which the Argentine Republic has heretofore solemnly adhered.

Among the principles which the memorable message of December 2, 1823, enunciates, there are two great declarations which particularly refer to these republics, viz., „The American continents are henceforth not to be considered as subjects for colonization by any European Powers," and „..... with the governments ..... whose independence we have ..... acknowledged, we could not view any interposition for the purpose of oppressing them or controlling in any other manner their destiny by any European power in any other light than as the manifestation of an unfriendly disposition toward the United States."

The right to forbid new colonial dominions within the limit of this continent has been many times admitted by the public men of England. To her sympathy is due, it may be said, the great success which the Monroe Doctrine achieved immediately on its publication. But in very recent times there has been observed a marked tendency among the publicists and in the various expressions of European opinion to call attention to these countries as a suitable

Conference, where both creditors and debtors will be assembled, to consider the subject." (*)

The Argentine Delegation wanted to have it placed on record that the principle which, in general, does not consider admissible the compulsory collection, of public debts does not ignore the rights of debtors against injustice or evident bad faith; it considered, on the contrary, that a denial of justice or preference to a national to the prejudice of a foreigner, constitutes, by reason of an unjustifiable

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(*) In regard to this, it is worthy of notice that at the First Pan-American Conference held at Washington in 1889—90, the Hon. W. H. Trestcot, a Delegate of the United States, in the minority report on the subject of Claims and Diplomatic Intervention, presented in the Session of April 18th, 1890, referring to the matter of claims against Governments, for damages suffered by foreigners, expressed himself in the following manner;

„Into what Court will the Government allow the sovereignty of the nation to be called to answer its responsibility to the claimant, and how is its judgment to be enforced? What, under such a theory, becomes of a native merchant in a belligerent country? What guaranty has the foreigner against the forced loan to which a native citizen may be bound patriotically to submit? Take the case of the foreign bondholder furnishing to the Government invaluable assistance at critical times where the debt is neither denied nor repudiated, but simply and persistently left unpaid. Has any Government hesitated to protect by diplomatic reclamation the interests of its subjects, which no foreigner can enforce in the courts of his debtor? Take the cases where the persons and property of foreigners have not received the protection which the native Government entitles them. Is it conceivable that so great a departure from ancient usages and recognized international law would be accepted?

Those claims have represented the courage and enterprise and capital of a shrewd, venturesome, but singularly intelligent and broad class of men. They have ventured much, not it is true without hope of reward; but very much that did substantial work in building up large industries, in sustaining struggling Governments, and in aiding other nations in their efforts at independence. And every day, as the world comes closer together, this community of enterprise, this transfer of labor and capital to do the work of other nations is spreading, and becoming not merely private and inconsiderable contracts, but large transactions, involving legislative action, government intervention. and national responsibility."

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field for future territorial expansion. Thinkers of the highest order have pointed out the desirability of turning in this direction the great efforts which the principal powers of Europe have exerted for the conquest of sterile regions with trying climates and in remote regions of the earth. The European

injury, an offence and a violation of international law which creates a relation of State to State, with all the consequences that are derived from such ties.

The Committee, and in its turn the Conference, finally accepted the following report:

„As clearly established at the session of the Governing Board of the Bureau of the American Republics, held on April 21 of this year, the scope of this draft was confined to public debts, and was not in any manner intended to be an acceptance of the legitimacy of their compulsory collection. The committee believes it preferable to base the question at issue on broader and more comprehensive grounds, so that it shall comprise not only public debts, but other cases of an exclusively pecuniary nature, often the cause of deplorable conflicts.

It was not proposed that definite conclusions should be reached at this Conference, composed exclusively of American nations, but that the true principles that should govern such

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writers are already many who point to the territory of South America, with its great riches, its sunny sky, and its climate propitious for all products, as, of necessity, the stage on which the great powers, who have their arms and implements of conquest already prepared, are to struggle for the supremacy in the course of this century.

The human tendency to expansion, thus inflamed by the suggestions of public opinion and the press, may, at any moment, take an agressive direction, even against the will of the present governing classes. And it will not be denied that the simplest way to the setting aside and easy ejectment of the rightful authorities by European governments is just this way of financial interventions — as might be shown by many examples. We in no wise pretend that the South American nations are, from any point of view, exempt from the responsibilities of all sorts which violations of international law impose on civilized peoples. We do not nor can we pretend that these countries occupy an exceptional position in their relations with European powers, which have the indubitable right to protect their subjects as completely as in any other part of the world, against the persecutions and injustices of which they may be the victims. The only principle which the Argentine Republic maintains and which it would, with great satisfaction, see adopted, in view of the events in Venezuela, by a nation that enjoys such great

cases should be left to be fixed by an international assembly composed of all the nations of the world.

The committee has not overlooked the fact that the subject-matter not only involves the application of principles of international law, buth those which affect the internal sovereign rights of nations, and that these latter are to be respected in resolutions of this Conference, a body zealous in its purpose to respect the prerogatives of national sovereignty.

The committee understands that when the principles of international law, embodied in treaties or generally accepted, are violated, that the case contemplated by the programme topic arises, and that it refers solely to debts contracted by a state with private individuals, without the intervention of another state.

Inasmuch as it is the opinion of this committee that the scope of the topic under consideration should be extended to other cases having a pecuniary origin in addition to those related distinctly to public debts, the only ones included in the

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authority and prestige as does the United States, is the principle, already accepted, that there can be no territorial expansion in America on the part of Europe, nor any oppression of the peoples of this continent, because an unfortunate financial situation may compel some one of them to postpone the fulfillment of its promises. In a word, the principle which she would like te see recognized is: that the public debt can not occasion armed intervention nor even the actual occupation of the territory of American nations by a European power.

The loss of prestige and credit experienced by states which fail to satisfy the rightful claims of their lawful creditors brings with it difficulties of such magnitude as to render it unnecessary for foreign intervention to aggravate with its oppression the temporary misfortunes of insolvency.

The Argentine Government could cite its own example to demonstrate the needlessness of armed intervention in these cases.

The payment of the English debt of 1824 was spontaneously resumed by her after an interruption of thirty years, occasioned by the anarchy and the disturbances which seriously affected the country during this period, and all the back payments and all the interest payments were scrupulously made without any steps to this end having been taken by the creditors.

Later on a series of financial happenings and reverses, completely beyond

topic in the programme and as the governments represented herein may not be in accord as to the timeliness of the presentation of the subject, this committee limits itself to recommending the adoption of the following resolution:

„Resolved, by the Third International Conference of the American States, assembled in Rio Janeiro:

„To recommend to the Governments represented therein that they consider the point of inviting the second Peace Conference at The Hague to consider the question of the compulsory collection of public debts, and, in general, means tending to diminish between nations conflicts having an exclusively pecuniary origin."

The Conference therefore left to each of the Governments the opportunity to either bring the subject or not to the attention of the Second Hague Conference.

In the note addressed on June 7th 1906, by the Secretary of State of the United States, the Honorable Elihu Root, to His Excellency Baron Rosen, the Russian Ambassador

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the control of her authorities, compelled her for the moment to suspend the payment of the foreign debt. She had, however, the firm and fixed intention of resuming the payments as soon as circumstances should permit, and she did so actually some time afterwards, at the cost of great sacrifices, but of her own free will and without the interference or the threats of any foreign power . . . And it has been because of her perfectly scrupulous, regular and honest proceedings, because of her high sentiment of equity and justice so fully demonstrated, that the difficulties undergone, instead of diminishing, have increased her credits in the markets of Europe. It may be affirmed with entire certainty that so flattering a result would not have been obtained had the creditors deemed it expedient to intervene with violence at the critical financial period, which was thus passed through successfully. We do not nor can we fear that such circumstances will be repeated.

At this time, then, no selfish feeling animates us, nor do we seek our own advantage in manifesting our desire that the public debt of States should not serve as a reason for an armed attack on such States. Quite as little do we harbor any sentiment of hostility with regard to the nations of Europe. On the contrary we have maintained with all of them since our emancipation the most friendly relations, especially with England, to whom we have recently given the best proof of the confidence which her justice and equanimity

at Washington, in reply to the note enclosing a summary of the Programme of the Second Peace Conference submitted by Russia, the United States expressed the desire that there should be included in it, the subjects of the limitation of armaments and the forcible collection of public debts. Theese are the words of the note as to the last question:

„There is one other subject which it seems to the Government of the United States might well engage the attention of the Conference. The subjects already proposed relate chiefly to lessening the evils and reducing the barbarity of war. Important as this is, war will still be cruel and barbarous, and the thing most important is to narrow the cause of war and reduce its frequency. It seems doubtful, in view of the numerous reservations which accompanied the signatures of the powers to the very moderate provisions of the convention for international arbitration agreed upon at the First Conference, whether it will be practicable to secure any very general assent to

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inspire in us by intrusting to her decision the most inportant of our international questions, which she has just decided, fixing our limits with Chili after a controversy of more than seventy years.

We know that where England goes civilization accompanies her, and the benefits of political and civil liberty are extended. Therefore we esteem her, but this does not mean that we should adhere with equal sympathy to her policy in the improbable case of her attempting to oppress the nationalities of this continent which are struggling for their own progress, which have already overcomed the greatest difficulties and will surely triumph — to the honor of democratic institutions. Long, perhaps, is the road that the South American nations still have to travel. But they have faith enough and energy and worth sufficient to bring them to their final development with mutual support.

And it is because of this sentiment of continental brotherhood and because of the force which is always derived from the moral support of a whole people that I address you, in pursuance of instructions from His Excellency the President of the Republic, that you may communicate to the Government of the United States our point of view regarding the events in the further development of which that Government is to take so important a part, in order that it may have it in mind as the sincere expression of the sentiments of a nation that has faith in its destiny and in that of this whole

an agreement for compulsory arbitration without such extensive exceptions as to do away in great measure with its compulsory effect. It does not follow, however, that there may not be agreement upon the rules of conduct which ought to be followed in particular cases out of which controversy is liable to arise; or that these rules, if observed, may not greatly decrease the probabilities of war. The United States feels that it would be well worth while for the powers assembled at the Peace Conference to consider whether such an effect could not be produced by an agreement to observe some limitations upon the use of force for the collection of ordinary public debts arising out of contracts. The United States, accordingly, reserves to itself the liberty to propose this further subject for the consideration of the Conference."

In an address made by Secretary Root on the 15th of April 1907, at the opening of the National Arbitration and Peace Congress in New-York. he ratified the position of the United States thus:

„The Government of the United States has also considered that the Second Hugue Conference might well agree in

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continent, at whose head march the United States, realizing our ideals and affording us example.

Please accept, etc.,

(Signed) LUIS M. DRAGO.

Mr. HAY to Señor GARCIA MÉROU.

Department of State,
Washington,
February 17, 1903.

My dear Mr. Minister: I inclose a memorandum in regard to Mr. Drago's instruction of December 29, 1902, a copy of which you left with me.

I am, etc.,

(Signed) JOHN HAY.

(Inclosure)

putting some limitation upon the use of force for the collection of ordinary contract debts due by one government to the citizens of another.

It has long been the established policy of the United States not to use its Army and Navy for the collection of such debts. We have not considered the use of force for such a purpose consistent with that respect for the independent sovereignty of other members of the family of nations which is the most important principle of international law and the chief protection of weak nations against oppression. It seems to us that the practice is injurious in its general effect upon relations of nations and upon the welfare of weak and disordered states, whose development ought to be encouraged in the interests of civilization, and that it offers frequent temptation to bullying and oppression

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MEMORANDUM.

Without expressing assent to or dissent from the propositions ably set forth in the note of the Argentine Minister of Foreign Relations dated December 29, 1902, the general position of the Government of the United States in the matter is indicated in recent messages of the President.

The President declared in his message to Congress, December 3, 1901, that by the Monroe doctrine „we do not guarantee any State against punishment if it misconducts itself, provided that punishment does not take the form of the acquisition of territory by any non-American power".

In harmony with the foregoing language, the President announced in his message of December 2, 1902:

„No independent nation in America need have the slightest fear of aggression from the United States. It behooves each one to maintain order within its own borders and to discharge its just obligations to foreigners. When this is done they can rest assured that, be they strong or weak, they have nothing to dread from outside interference."

Advocating and adhering in practice, in questions concerning itself, to the resort of international arbitration in settlement of controversies not adjustable by the orderly treatment of diplomatic negotiation, the Government of the United States would always be glad to see the questions of the justice of claims by one State against another growing out of individual wrongs or national obligations, as well as the guarantees for the execution of whatever award may be made, left to the decision of an impartial arbitral tribunal before which the litigant nations, weak and strong alike, may stand as equals in the eye of international law and mutual duty.

and to unnecessary and unjustifiable warfare. It may be that the nonpayment of public debts may be accompanied by such circumstances of fraud and wrongdoing or violation of treaties as to justify the use of force as a last ressort; but we hope to see an international consideration of the subject which shall discriminate between such cases and the simple nonperformance of a contract with a private person, and to see a resolution in favor of reliance exclusively upon peaceful means in cases of the latter class. It may well be that the principle of arbitration can be so extended in its application that the class of adventurers who have long been in the habit of trading upon the necessities of weak and distressed governments may be required to submit their often exorbitant and unconscionable demands to an impartial tribunal, before which both parties may be heard both as to the validity and the amount of their claims and the time and manner of payment to which they are entitled. The record of the cases which have been submitted to arbitration during recent years shows that the total awards of the arbitral tribunals have amounted to a very small percentage of the demands submitted. It is difficult to resist the inference that the claims of private citizens who seek the good offices of their own governments to obtain payment from other countries generally need investigation by fair tribunals rather than immediate and peremptory enforcement."

In conformity with the reservation, made in the Note of June 7th 1906 to Baron Rosen, by Mr. Root, at the Second Plenary Session of the Peace Conference, on the 19th of June 1907, a letter was read from the Honorable J. H. Choate announcing that the question would be presented by the United States and, on the 2nd of July, a proposition was made by the United States which, translated, in its corrected form of the 29th of August 1907, reads as follows:

„In order to avoid between nations armed conflicts of a purely pecuniary origin arising from contractual debts, claimed from the Government of a country by the Government of another country as due to its citizens or subjects, the Signatory Powers have agreed not to have recourse to armed force for the recovery of the said contractual debts.

„Nevertheless, this stipulation shall not apply when the debtor State refuses, or leaves without reply, an offer of arbitration, or in cases of acceptance renders the establishment of the agreement impossible, or, after the arbitration, fails to comply with the sentence rendered.

„It is agreed, moreover, that the arbitration at issue shall conform to the procedure of Chapter III of the Convention of The Hague for the Peaceful Adjustment of International Differences, and that it shall fix, in so far as the parties may not agree, the justice and the amount of the debt, the time and the manner of settlement."

An event which gave a remarkable interest to the Rio Conference was the trip to Brazil, during its sessions, of the Secretary of State of the United States and afterwards to most of the South American Republics. This was the first time that the Secretary of State officially visited a foreign nation and his tour did a great deal to bring together different sections of the continent; it dispelled many prejudices and created an impression of confidence and a spirit of harmony which made the work of the Conference easier and more cordial. The ideas and sentiments expressed by Mr. Root in his speeches, as Dr. Cornejo, the Peruvian orator observed, stirred in the soul of America, all her memories, all her dreams, and all her aspirations.

A special session was held in his honor on July 31st, 1906. In the course of the address welcoming him, Dr. Nabuco, speak-

ing of the Pan-American Conferences, thus described them;

„The periodical meeting of this body, exclusively composed of American nations, assuredly means that America forms a political system separate from that of Europe; a constellation with its own distinct orbit.

By aiming, hower, at a common civilization and by trying to make of the space we occupy on the globe a vast neutral zone of peace, we are working for the benefit of the whole world. In this way we offer to the population, to the wealth, and to the genius of Europe a much wider and safer field of action in our hemisphere than if we formed a disunited continent or if we belonged to the belligerent camps into which the Old World may become divided."

The American Secretary of State in the masterpiece of eloquence and statesmanship which he delivered in response, said, in part:

„No nation can live unto itself alone and continue to live. Each nation's growth is a part of the development of the race. There may be leaders, and there may be laggards, but no nation can long continue very far in advance of the general progress of mankind, and no nation that is not doomed to extinction can remain very far behind. It is with nations as it is with indivudual men, intercourse, association, correction of egoism by the influence of other's judgment, broadening of views by the experience and thoughts of equals, acceptance, of the moral standards of a community the desire of whose good opinion lends a sanction to the rules of right conduct-these are the conditions of growth in civilization. A people whose minds are not opened to the world's progress, whose spirits are not stirred by the aspirations and achievements of humanity, struggling the world over for liberty and justice, must be left behind by civilization in its steady and beneficent advance.

„To promote this mutual interchange and assistance between the American Republics, engaged in the same great task, inspired by the same purpose, and professing the same principles, I understand to be the function of the American Conference now in session. There is not one of all our countries that can not benefit the others; there is not one that can not receive benefit from the others; there is not one that will not gain by the prosperity, the peace, the happiness of all.

According to your programme, no great and impressive single thing is to be done by you; no political questions are to be discussed; no controversies are to be settled; no judgment is to be passed upon the conduct of any State; but many subjects are to be considered, which afford the possibility of removing barriers to intercourse, of ascertaining for the common benefit what advances have been made by each nation in knowledge, in experience, in enterprise, in the solution of difficult questions of government, and in ethical standards, of perfecting our knowledge of each other, and of doing away with the misconceptions, the misunderstandings, and the resultant prejudices that are such fruitful sources of controversy.

And there are some subjects in the programme which invite discussion that may lead the American Republics toward agreement upon principles, the general practical application of which can come only in the future through long and patient effort. Some advance at least may be made here toward the complete rule of justice and peace among nations in lieu of force and war.

The association of so many eminent men from all the republics, leaders of opinion in their own homes, the friendships that will arise among you, the habit of temperate and kindly discussion of matters of common interest, the ascer-

tainment of common sympathies and aims, the dissipation of misunderstandings, the exhibition to all the American peoples of this peaceful and considerate method of conferring upon international questions, this alone, quite irrespective of the resolutions you may adopt, and the conventions you may sign, will mark a substantial advance in the direction of international good understanding.

These beneficent results the Government and the people of the United States of America greatly desire. We wish for no victories, but those of peace; for no territory except our own; for no sovereignty except the sovereignty over ourselves. We deem the independence and equal rights of the smallest and weakest member of the family of nations entitled to as much respect as those of the greatest empire, and we deem the observance of that respect the chief guaranty of the weak against the oppression of the strong. We neither claim nor desire any rights, or privileges, or powers that we do not freely concede to every American Republic. We wish to increase our prosperity, to expand our trade, to grow in wealth, in wisdom, and in spirit, but our conception of the true way to accomplish this is not to pull down others and profit by their ruin, but to help all friends to a common prosperity and a common growth, that we may all become greater and stronger together.

Within a few months, for the first time the recognized possessors of every foot of soil upon the American continents can be, and I hope will be, represented with the acknowledged rights of equal sovereign States in the great World Congress at The Hague. This will be the world's formal and final acceptance of the declaration that no part of the American continents is to be deemed subject to colonization. Let us pledge ourselves to aid each other in the full per-

formance of the duty to humanity which that accepted declaration implies, so that in time the weakest and most unfortunate of our republics may come to march with equal step by the side of the stronger and more fortunate.

Let us help each other to show that for all the races of men the Liberty for which we have fought and labored is the twin sister of Justice and Peace. Let us unite in creating and maintaining and making effective an all-American public opinion, whose power shall influence international conduct and prevent international wrong and narrow the causes of war, and forever preserve our free lands from the burden of such armaments as are massed behind the frontiers of Europe, and bring us ever nearer to the perfection of ordered liberty. So shall come security and prosperity, production and trade, wealth, learning, the arts, and happiness for us all.

Not in a single conference nor by a single effort can very much be done. You labor more for the future than for the present; but if the right impulse be given, if the right tendency be established, the work you do here will go on among all the millions of people in the American continents long after your final adjournment — long after your lives — with incalculable benefit to all our beloved countries, which may it please God to continue free independent and happy for ages to come."

CHAPTER V.

CONSTITUTIONAL PROVISIONS. TREATIES.

In the previous chapters we have followed the combined labor of the several countries of the New Continent, in their Conferences, to establish closer relations and to consecrate Arbitration as the only means of settling international questions; but this has only been a part of the practical efforts of Latin America to make the application of the great principle not a mere theory but a real fact.

Four Republics have incorporated in their Constitutions, provisions as to Arbitration.

Ecuador in the one of the 31st of March, 1878, has article 116, as follows: „In all negotiations to conclude international treaties of friendship and commerce it will be proposed that the differences between the contracting parties shall be decided by the arbitration of a friendly power or powers, without appealing to war."

The Dominican Republic declares in its political charter: „The Powers charged by this Constitution with declaring war, must not do so without first proposing the arbitration of one or more friendly powers. In order to affirm this principle, in all the International Treaties concluded by the Republic, there shall be included this Clause: „All the differences which may arise between the contracting parties, shall be submitted to the arbitration of one or more friendly nations, before appealing to war."

The United States of Brazil in its Constitution of the 24th of February 1891 has this Article 34: „It is an exclusive power of the National Congress: (11) to authorize the Government to declare war, if arbitration cannot take place or would be unsuccessful."

Venezuela, by Article 141 of the Constitution of the 21st of June 1893, established that: „In international treaties of commerce and friendship there will be inserted a clause that „All the differences between the contracting parties shall be decided, without appeal to war, by the arbitration of a friendly power or powers."

Besides the above when by the Treaty of Union, of Amapala, dated the 20th of June, 1895, Nicaragua, Honduras and Salvador became, for a time, one political entity under the name of the Greater Republic of Central America, they stipulated as a fundamental basis the following: Article 4, paragraph 2nd. „In all Treaties which the Diet may conclude, a clause will be expressly inserted that all the questions which may arise shall be settled always, and without exception, by means of arbitration."

A brief and incomplete summary of the treaties and arbitrations of Latin America show still more how deep-rooted is the principle.

The Argentine Republic had a general arbitration clause in the Convention with Bolivia in 1858; it submitted to the decision of Chili, in 1870, the question of losses arising out of a decree prohibiting vessels from Montevideo from entering Argentine ports; in 1876 a boundary dispute was settled with Paraguay by the President of the United States. In the following Treaties there are also provisions for arbitration, with Peru in 1874; with Paraguay in 1876, with Chili in 1881; in 1887 in the Protocol of the unofficial

Conference with Bolivia, Colombia, Euador, Peru, Salvador, the Dominican Republic and Venezuela; in 1889 with Brazil as to boundaries, decided by the President of the United States; in 1896, boundary with Chili, the British Government being the Arbiter; with Italy in 1898; with Uruguay on July 8, 1899 submitting all questions excepting those which may refer to the Constitution and those which can not be resolved by direct negotiations; similar Treaties with Paraguay on November 6, 1899; with Spain, January 19, 1902, at Mexico and afterwards at Buenos-Aires on September 17, 1903; with Bolivia, February 3, 1902; with Chili, May 28, 1902; with Brazil, September 7, 1905; and lastly, at the Second Peace Conference, on September 18, 1907 one with Italy, signed by the Delegates of both countries, in which questions as to nationality are also excepted.

Besides the Treaties already cited with the Argentine Republic, Bolivia has had arbitration clauses in its Treaties with Peru in 1831 and 1863; with Chili in 1867 and 1874; in 1871 with Chili, Ecuador and Peru, through the Secretary of State of the United States an armistice was effected with Spain on April 18, 1871; in 1873, in a question of accounts, it chose the Minister of the United States at Santiago de Chili as arbitrator between it and Chili, an award being given in 1875; by the Treaties of the 6th of August 1874 and the 21st of July 1875 with Chili, it was stipulated that the Emperor of Brazil was to appoint an umpire in case the experts appointed by both Powers could not come to an agreement; in 1876, 1890 and 1895 it made conventions with Peru; and in 1896 with Brazil. Since 1900, Bolivia has concluded a general Treaty of Arbitration with Peru, signed at La Paz, on the 21st of November 1901; in it, it was stipulated that all pending controversies and those which

might arise in the future of whatever nature, are to be submitted to arbitration provided they can not be settled by direct negotiations. Besides this Treaty a special convention was signed on the 30th of December 1902 leaving to the judgment and decision of the Goverment of the Argentine Republic the pending question of boundary between Bolivia and Peru, and in compliance with that Treaty the briefs and answers have been presented, and the final decision is expected at an early date; on the 19th of November 1903, at Petropolis, it entered into an agreement with Brazil which at present rules their political, commercial and economic relations. In it there is a compromisory clause by which arbitration is to decide all questions of a general character between the said countries. For technical differences which may arise from the fixing of the international boundaries, the Royal Geographical Society of London was chosen as arbiter, and to determine and liquidate the claims of the two Governments for damages, due to the troubles of Acre, it was agreed that a Court of Arbitration should be constituted, consisting of a representative of Bolivia, another of Brazil, and the Legate of the Holy See at Rio Janeiro. With Chili, Bolivia made a treaty of peace and amity on the 23rd of October 1904 which provided that all questions as to the interpretation and application of the said treaty shall be decided by the Permanent Court of Arbitration of The Hague. With Paraguay, at the beginning of this year, a preliminary agreement was entered into to submit to the arbitration of His Excellency the President of the Argentine Republic, the controversy as to boundary. And finally, in the contract made with Messrs. Speyer & Company and the National City Bank of New-York, who are to construct a railroad system in Bolivia, it has been agreed that all differences shall be settled by the Permanent Court at the Hague.

Brazil, in addition to the Treaties made with the Argentine Republic and Bolivia; in 1863 in the case of H. M. S. „Forte", with Great Britain, submitted the differences to the King of the Belgians; in 1870 the British Minister at Washington decided the case of the loss of the „Canada" of the United States; in 1873 the Envoys of the United States and Italy, at Rio de Janeiro, rendered a decision upon the claims of the Earl of Dundonald, a British subject against Brazil; in 1896 the President of the United States was chosen arbiter in the claims of Italy, in 1895 it submitted to the King of Portugal the question of Trinidad claimed by Great Britain, in 1901 to the King of Italy, the boundary with British Guiana and in 1905 signed Conventions with Peru as to boundaries and as to claims.

Chili has not only concluded the arbitration agreements heretofore mentioned, but also has applied the principle in 1858 in the case of the American Ship „Macedonian" captured by Lord Cochrane, Admiral of the Chilian Navy; in 1866, it favored arbitration for the settlement of war with Spain, and in 1879 to avoid the war of the Pacific made efforts also to apply it. The liquidation of the accounts of the allied navies of Chili and Peru in 1866 was made by arbitrators „ad-hoc". In 1882, 83 and 84 agreements were signed by Chili with the Governments of Germany, France, England, Sweden and Norway, Italy, Switzerland, Austria Hungary and Belguin establishing courts of arbitration to settle the claims caused by the war of the Pacific; in 1873 the Charge d'Affaires of Italy decided the question of the American ship „Good Return." In 1892 a convention of arbitration was entered into with the United States to settle claims arising from damages caused by civil war, and pursuant to it a court held its sessions at Washington

consisting of a Chilian, an American and an Umpire appointed by the Swiss Confederation, by a similar agreement, in 1893 the English claims of the war with the Pacific were settled, and 1895 the French; and to determine the rights to the money obtained from the sale of guano made by Chili, in favor of the creditors of Peru, there was constituted an Arbitration Court which had its seat at Laussaune.

Colombia, besides her general arbitration Treaty of 1880 with Chili, has had the principle established in Conventions with Peru in 1829, with Venezuela in 1842; with Peru in 1848 and in 1858, with Salvador in 1855, with Ecuador in 1856, with Costa Rica in 1865, with Peru in 1870, with Salvador in 1880, in 1881 with Venezuela to determine the boundaries, the King of Spain being the arbitrator, with Ecuador in 1894, with Spain in 1894, decided by the President of the United States, with Italy in the Cerruti claim, with Venezula in 1896 and embracing all questions in the one with Peru in 1905. Besides, Colombia, has had several Commissions with the United States organized under Conventions concluded September 10, 1857 and February the 10th 1864, which dealt with important cases as to American rights on the Isthmus of Panama, under the Treaty with New Grenada of 1846. Another Commission, under agreement of August 17 1874, decided the case of the capture of the of the American steamer „Montijo" by insurgents in the State of Panama.

Costa Rica has applied arbitration in its most ample form in Treaties with Honduras in 1850, with the United States, as to claims in 1860, with Nicaragua in 1861 and 1868, with Honduras, Salvador, Nicaragua and Guatemala in 1872, with Nicaragua in 1884, with Nicaragua in 1886 submitting

to the arbitration of the President of the United States the validity of Treaties, boundaries and rights of navigation; in 1887 and 1902 with the other republics of Central America and in 1890 with Ecuador.

Cuba, in December, 29, 1903, concluded a Treaty of Friendship and Commerce with Italy in which it is stipulated that arbitration should be recurred to for all differences of interpretation, excecution and violation of the Treaty.

The Dominican Republic in 1881 submitted to the President of France the question with the Netherlands as to the „Havana Packet," in 1882 it concluded a General Treaty of Arbitration with Salvador; in 1897 it left to Spain the decission of a claim of a French citizen, Chiappini and her boundary dispute with Hayti is before the Holy See,

Ecuador, besides the Treaties already enumerated, has made Conventions in which arbitration is required with Peru in 1860, with the United States in 1862, with Spain in 1888, with Mexico in 1888, and as to claims with the United States in 1893.

Guatemala has proclaimed the principle in her agreements with Honduras in 1845, with Nicaragua in 1862, with Costa Rica, Honduras and Salvador in 1872, with Salvador in 1876, with Honduras and Salvador in 1885; in 1900 in the settlemend of the claim of the American citizen Robert May, with Salvador and Honduras on the 20th of July 1906, with them and Costa Rica on the 25th of September 1906 and with Salvador and Nicaragua on the 3rd of April 1907.

Hayti has had several arbitrations with the United States. By a Protocol signed May 24th 1884 it referred to one of the former Justices of the Supreme Court of the United States the Pelletier and Lacaze claims involving questions of administrative and judicial procedure. On March 7th 1885

a Mixed Commission of two American and two Haitians was appointed to adjust the claims of citizens of the United States. On May 22nd 1888 the case of Van Bokkelen, a citizen of the United States was submitted to arbitration, and in 1900 the claim of Metzger, ad American citizen was decided by the Ex-Secretary of State, Day, a Member of the Supreme Court of the United States. Hayti has also had Mixed Claims Commissions with Great Britain in 1890, France in 1892 and Germany in 1895.

Honduras has joined not only in the Treaties cited but with Spain in 1894 and 1907.

Not only has Mexico entered into the Conventions above mentioned, but with France submitted in 1839 questions growing out of hostilities to the Queen of England under a Treaty dated April the 11th 1839 with the United States, it established a Mixed Commission for the adjustment of miscellaneous claims, composed of two American and two Mexican Commissioners, and as an Umpire a subject of Prussia. Another Commission, under the Treaty of July 4th 1868, consisted of two Commissioners and an Umpire, and lasted from July 31st 1869 to November 20th 1876. A thousand and seventeen claims were presented by the United States, and nine hundred and ninety eight by Mexico, and the aggregate amount exceeded half a billion dollars. The amount allowed was about four millions and a quarter. Mexico also adopted with the United States a Convention, March 1st 1889, by which an International Boundary Commission was established for the determination of questions growing out of changes in the course of rivers which formed their boundary. This provision was in accordance with arbitral stipulations which are found in the Treaties between the two countries of January 12th 1828, February

the 2nd 1848, December the 30th 1853, and July 29th 1882.

In 1866 the claims of Great Britian were submitted to arbitration; in 1859, a Convention with this principle was signed with Spain; with Sweden and Norway in 1885, Italy in 1899 and Persia in 1903.

And the first case presented to the Hague Permanent Court was the adjustment of certain contentions arising under what was known as the „Pious Funds of the Californias", by Mexico and the United States, under a Treaty signed at Washington May 22nd 1902.

Nicaragua, besides the Conventions already stated to which it has been a party, submitted, to the arbitration of the Emperor of Austria who gave an award on July 2nd 1882, a question as to the Mosquite Indians. On July 29th 1880 it presented to the Court de Cassation of France the case of the seizure of a French ship at Corinto, in 1900 it submitted to arbitration a question with the United States of the Port Globe Co., and on April 23rd 1907 signed a Treaty of Peace, Amity and Commerce with Salvador in which it is agreed that any controversy that may hereafter arise between them and which might alter their friendly relations, shall be settled by means of compulsory arbitration applied by the joint action of the Presidents of the United States and Mexico, who shall have power full to appoint an Umpire whose award shall be final. The President of Mexico may delegate his powers as arbitrator to the Mexican Ambassador in Washington or to such other person as he may designate. In its Traty with Italy in 1906, there is the same clause as in the Italo-Cuban Convention.

Paraguay not only has entered into the Treaties heretofore expressed, but by a Convention signed February 4th 1859 it submitted to arbitration the claims made against it by the

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United States and the Paraguay Navigation Company. These claims had been the cause of a naval demonstration by the United States against Paraguay, and the Commission composed of a representative of each Government decided on August 13th 1860 that the claim was not well founded. In 1883, it made a general arbitration Convention with Uruguay and in 1906 with Peru.

Peru, as it has been said, has made with all its neighbours Arbitration Treaties. Besides these, by a Convention concluded December 20th 1862 it agreed to refer two claims with the United States for the seizure and confiscation of the vessels „Georgiana" and „Lizzie Thompson," to the King of the Belgians who having declined the trust, the United States did not pursue the subject further. For miscellaneous claims with the United States constituted two Commissions, under Conventions of January 12th 1863, and December 4th 1868. It submitted to the Senate of Hamburg a claim against it presented by Great Britain, and the award was made on the 12th of April, 1864. With Japan, owing to differences as to the territorial jurisdiction of the latter, it submitted them to the Emperor of Russia, who gave a decision May 17-29, 1875. Peru also entered into Treaties with arbitration clauses with Spain in 1897 and with Italy in 1899. In 1905 it signed a General Convention with Italy.

Salvador has also incorporated the principle of arbitration in its Treaty with Italy in 1906.

Uruguay has been a party to the Treaties already cited and to one with Italy in 1876 and a General Arbitration Convention on the 22nd of January 1902 with Spain, similar to the one with the Argentine Republic, and has an arbitration clause in its Treaty with Persia of 1903.

Venezuela, besides the Arbitration Treaties heretofore

mentioned, has repeatedly appealed to arbitration to settle its international differences. It has had several Mixed Commissions; with the United States under Conventions of April 25 1866, December 5 1885 and that of January 19 1892 for the settlement of the claim of the Venezuelan Steam Transportation Company, an American Company for the seizure of its Steamers on the Orinoco, with France in 1864, and with Great Britain under Treaty of September 21st 1868. By Treaty of August 5, 1857, the Queen of Spain decided the sovereignty of the Aves Islands claimed by the Netherlands, in 1891 it submitted the case of a French citizen Fabiani to the President of the Swiss Federation; on the 2nd of February 1897 it signed a Convention with England to determine by arbitration the boundary between it and British Guiana; in 1902 and 1903, through several Mixed Commissions, the claims of several Powers were determined and by Protocols, made at Washington on the 7th of May 1903, it submitted to the Hague Permanent Court the determination of the questions at issue with the allied Powers: Great Britain, Germany and Italy. These countries asked President Roosevelt to become the sole arbiter of the controversy between them and Venezuela. The President declined and suggested the Hague Court. In his annual message to Congress he said as to the motive which animated him in the case:

„It seemed to me to offer an admirable opportunity to advance the practice of the peaceful settlement of disputes between nations and to secure for the Hague Tribunal a memorable increase of its practical importance. The nations interested in the controversy were so numerous, and, in many instances so powerful as to make it evident that beneficent results would follow from their appearance, at the same time, before the bar of that august Tribunal of Peace."

This arbitration brought the following nations to the Hague: Russia and Austria which were on the Tribunal and Venezuela, Great Britain, Germany, Italy, France, Spain, Belgium, the Netherlands, Sweden and Norway, the United States, and Mexico who appeared as interested parties.

On the 14th of June 1907, the Powers represented at the First Peace Conference signed a protocol in order to make possible the adherence of the Powers non-signatories of the Convention for the Peaceful Adjustment of International Differences, of July 29th, 1899, and the next day the following countries signed a Protocol of adherence: Argentine Republic, Brazil, Bolivia, Chili, Colombia, the Dominican Republic, Cuba, Guatemala, Hayti, Nicaragua, Panama, Paraguay, Peru and Venezuela. Uruguay adhered on the 17th, Salvador on the 20th of June and Ecuador on the 3rd of July.

The 15th of June 1907, the Second Peace Conference opened its sessions under the Presidency of His Excellency Monsieur de Nélidow. The call was answered by Germany, the Argentine Republic, Austria-Hugary, Belgium, Bolivia, Brazil, Bulgaria, Chili, China, Colombia, Cuba, Denmark, the Dominican Republic, Ecuador, Spain, United States of America, France, Great Britain, Greece, Guatemala, Hayti, Honduras, Italy, Japan, Luxemburg, Mexico, Montenegro, Nicaragua, Norway, Panama, Paraguay, The Netherlands, Peru, Persia, Portugal, Roumania, Russia, Salvador, Servia, Siam, Sweden, Switzerland, Turkey, Uruguay and Venezuela.

Empires, Kingdoms, Republics, Duchy, Principalities, the civilized world „installed in an august body to consider the weighty questions of peace and war."

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